

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

VALBORG G. SCHAUB,

Plaintiff,

vs.

DAVID KNIGHT, et al.,

Defendants.

No. 91-C-96-E

**FILED**

APR 29 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT**

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff recover of the Defendants the sum of \$69,703.01, with interest thereon as provided by law, and his costs of action.

ORDERED this 29th day of April 29, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

Entered  
already  
closed

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 29 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

DONALD DEAN WALKER,  
a/k/a DONALD F. WALKER,  
Debtor.

No. 89-C-1070-C

By 89-00548-W

ORDER

The Court has received the mandate from the United States Court of Appeals for the Tenth Circuit. The appellate court affirmed this Court's decision regarding the appeal from the bankruptcy court but remanded "for further proceedings". Obviously, the only possible further proceedings must be conducted in the bankruptcy court.

It is the Order of the Court that this action is hereby remanded to the United States Bankruptcy Court for the Northern District of Oklahoma.

IT IS SO ORDERED this 29<sup>th</sup> day of April, 1992.

  
H. DALE COOK

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ROBERT RICHARDS,

Plaintiff,

vs.

HENRY BELLMON, et al.

Defendants.

No. 91-C-747-C

ORDER

This action, included among the group of cases considered by this Court pursuant to Harris v. Champion, 938 F.2d 1062 (10th Cir. 1991), was initially filed in the Western District of Oklahoma and assigned case No. CIV-90-1849. The United States District Court for the Western District of Oklahoma transferred the action to this District. The order of transfer has now been vacated and the action remains within the Western District but is assigned to the undersigned. Accordingly, the case No. 91-C-747 need not remain open in the Northern District.

It is the Order of the Court that case No. 91-C-747 in the Northern District of Oklahoma be administratively closed. The action shall proceed under CIV-90-1849 in the United States District Court for the Western District of Oklahoma.

IT IS SO ORDERED this 29th day of April, 1992.

  
H. DALE COOK

United States District Judge

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,  
Plaintiff,  
vs.  
AMERICAN AIRLINES, INC.,  
et al.,  
Defendants.  
AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,  
Defendant and Third Party  
Plaintiff,  
vs.  
AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,


INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, CONMACK, INC.**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Conmack, Inc.

Respectfully Submitted,

DOYLE & HARRIS



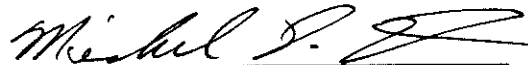
Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 29<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

FILED

APR 29 1992

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

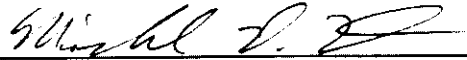
**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, OLYMPIC OIL COMPANY**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Olympic Oil Company.



Respectfully Submitted,

DOYLE & HARRIS




Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 27<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,


INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
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 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, VALMONT OILFIELD PRODUCTS COMPANY**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Valmont Oilfield Products Company.

Respectfully Submitted,

DOYLE & HARRIS

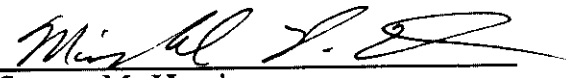
  
Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 27<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103

  
Steven M. Harris  
Michael D. Davis

FILED

APR 29 1992

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, RUTHERFORD/PACIFIC, INC.**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Rutherford/Pacific, Inc.

Respectfully Submitted,

DOYLE & HARRIS



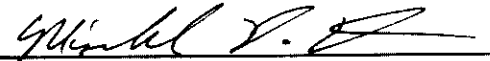
Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 2<sup>nd</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

610-1.27/rawp

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,  
Plaintiff,  
vs.  
AMERICAN AIRLINES, INC.,  
et al.,  
Defendants.  
AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,  
Defendant and Third Party  
Plaintiff,  
vs.  
AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT



INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, B & D TRUCK SERVICE**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, B & D Truck Service.

Respectfully Submitted,

DOYLE & HARRIS




Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

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Larry Gutierrez  
SIDELY & AUSTIN  
2049 Century Park East  
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Los Angeles, CA 90067

William Anderson  
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Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 29 1992

SENECA-CAYUGA TRIBE OF  
OKLAHOMA,

Plaintiff,

vs.

WAYNE NEWTON SENECA-CAYUGA  
GAMING, INC.,

Defendant.

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

No. 91-C-957-E

**ADMINISTRATIVE CLOSING ORDER**

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within ninety (90) days that settlement has not been completed and further litigation is necessary.

ORDERED this 28<sup>th</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

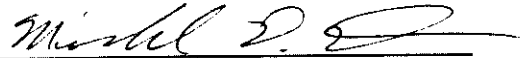
INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, BAVARIAN MOTORS, INC.**

COMES NOW the Defendant/**Third Party** Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its **Third Party** Complaint in relation to the Third Party  
 Defendant, Bavarian Motors, Inc.

Respectfully Submitted,

DOYLE & HARRIS



Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 25<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutierrez  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

610-1.17/rawp

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

**F I L E D**

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

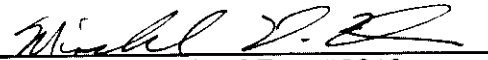
**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, EXXON CORPORATION**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Exxon Corporation.



Respectfully Submitted,

DOYLE & HARRIS


  
Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 27<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103

  
Steven M. Harris  
Michael D. Davis

610-1.20/rawp

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ATLANTIC RICHFIELD CO., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
AMERICAN AIRLINES, INC., )  
et al., )  
 )  
Defendants. )  
AND OTHER CONSOLIDATED ACTIONS )

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK )  
SERVICES, )  
 )  
Defendant and Third Party )  
Plaintiff, )  
 )  
vs. )  
 )  
AMERIGAS, INC.; )  
ATLAS TRUCKING CO., INC.; AYCOCK )  
LEASING a/k/a AYCOCK INVESTMENT )  
COMPANY; B & D TRUCK SERVICE; )  
BALDOR ELECTRIC COMPANY; BALDWIN )  
PIANO & ORGAN CO.; BALL BROS )  
TRUCKING CO.; BAVARIAN MOTORS, )  
INC.; BROWN & ROOT, INC.; )  
CHICKASHA MANUFACTURING CO., INC.; )  
CONMACK, INC.; CONOCO, INC.; )  
CONTINENTAL BAKING COMPANY; GREY- )  
HOUND LINES, INC.; CRAIN )  
INDUSTRIES, INC.; AMERICAN CAN )  
COMPANY d/b/a DIXIE CUPS; )  
DESOTO, INC.; ENVIRO-CHEM )  
CORPORATION; ERNIE MILLER PONTIAC )  
GMC, INC.; ; )  
EXXON CORPORATION; FACET ENTER- )  
PRISES, INC. a/k/a PURALATOR )  
PRODUCTS CO.; FEST IMPORTS, INC.; )  
FINE TRUCK LINE, INC.; FORSGREN, )  
INC.; FRANKS & SONS, INC.; GEAR )  
PRODUCTS, INC.; GRIEF BROS )  
CORPORATION; HACKNEY BROTHERS )  
BODY COMPANY; HALLETT CONSTRUCTION )  
COMPANY; HEEKIN CAN, INC.; JOHN )  
HENSHAL; HUDSON OIL COMPANY; )  
J R WOODS TRANSPORT SERVICES, )

INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
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 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, ENVIRO-CHEM CORPORATION**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Enviro-Chem Corporation.

Respectfully Submitted,

DOYLE & HARRIS



Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 27<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
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Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

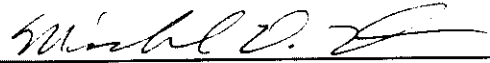
INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, P M F, INC.**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, P M F, Inc.

Respectfully Submitted,

DOYLE & HARRIS



Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 29<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
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1000 Atlas Life Building  
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Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

FILED

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT



INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
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 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
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 PLASTIC COMPANY, INC.; VALMONT )  
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 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF  
THIRD PARTY DEFENDANT, FEST IMPORTS, INC.**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Fest Imports, Inc.

Respectfully Submitted,

DOYLE & HARRIS



Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

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Steven M. Harris  
Michael D. Davis

FILED

APR 29 1992

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ATLANTIC RICHFIELD CO.,

Plaintiff,

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AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

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SERVICES,

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INC.; BROWN & ROOT, INC.;  
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CONMACK, INC.; CONOCO, INC.;  
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HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
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CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
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FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
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COMPANY; HEEKIN CAN, INC.; JOHN  
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J R WOODS TRANSPORT SERVICES,

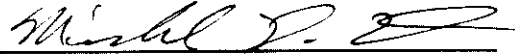
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 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
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 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, TULSA TRAILER & BODY, INC.**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Tulsa Trailer & Body, Inc.

Respectfully Submitted,

DOYLE & HARRIS



Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 27<sup>th</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutierrez  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis

610-1.24/rawp

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,  
et al.,

Defendants.

AND OTHER CONSOLIDATED ACTIONS

Case No.'s 89-C-868-B  
89-C-869-B  
90-C-859-B

**FILED**

APR 29 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

VACUUM & PRESSURE TANK TRUCK  
SERVICES,

Defendant and Third Party  
Plaintiff,

vs.

AMERIGAS, INC.;  
ATLAS TRUCKING CO., INC.; AYCOCK  
LEASING a/k/a AYCOCK INVESTMENT  
COMPANY; B & D TRUCK SERVICE;  
BALDOR ELECTRIC COMPANY; BALDWIN  
PIANO & ORGAN CO.; BALL BROS  
TRUCKING CO.; BAVARIAN MOTORS,  
INC.; BROWN & ROOT, INC.;  
CHICKASHA MANUFACTURING CO., INC.;  
CONMACK, INC.; CONOCO, INC.;  
CONTINENTAL BAKING COMPANY; GREY-  
HOUND LINES, INC.; CRAIN  
INDUSTRIES, INC.; AMERICAN CAN  
COMPANY d/b/a DIXIE CUPS;  
DESOTO, INC.; ENVIRO-CHEM  
CORPORATION; ERNIE MILLER PONTIAC  
GMC, INC.; ;  
EXXON CORPORATION; FACET ENTER-  
PRISES, INC. a/k/a PURALATOR  
PRODUCTS CO.; FEST IMPORTS, INC.;  
FINE TRUCK LINE, INC.; FORSGREN,  
INC.; FRANKS & SONS, INC.; GEAR  
PRODUCTS, INC.; GRIEF BROS  
CORPORATION; HACKNEY BROTHERS  
BODY COMPANY; HALLETT CONSTRUCTION  
COMPANY; HEEKIN CAN, INC.; JOHN  
HENSHAL; HUDSON OIL COMPANY;  
J R WOODS TRANSPORT SERVICES,

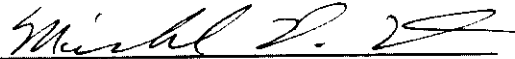
INC.; JONES TRUCK LINES, INC.; )  
 LITTLE ROCK ROAD MACHINERY; )  
 MASONITE CORPORATION; MOLL TOOL & )  
 PLASTIC; BAXTER HEALTH CARE )  
 CORPORATION; OKLAHOMA SOLVENTS )  
 & CHEMICAL COMPANY; P M F, INC.; )  
 PETROLEUM MARKETING CO.; STANDARD )  
 BRANDS, INC. d/b/a PLANTERS )  
 PEANUTS; PORCHE RACING; REID )  
 SUPPLY COMPANY; RENTAL UNIFORM )  
 SERVICES, INC. a/k/a T&G LEASING, )  
 INC.; ROLLINS TRUCK RENTAL; )  
 SCREW CORPORATION DIVISION VSI; )  
 SUPERWRENCH, INC.; SYNTEX AGRI )  
 BUSINESS INC. a/k/a SYNTEX )  
 CORPORATION; T D WILLIAMSON, INC.; )  
 TEXAS INSTRUMENTS, INC. )  
 TIMEX CORPORATION; )  
 TRANSMISSION SPECIALISTS COMPANY; )  
 TULSA TRAILER & BODY, INC.; )  
 U S POLLUTION CONTROL, INC.; )  
 UNION CARBIDE CHEMICALS AND )  
 PLASTIC COMPANY, INC.; VALMONT )  
 OILFIELD PRODUCTS COMPANY; WASTE )  
 MANAGEMENT OF TULSA, INC.; )  
 YATES IMPLEMENT CO., INC.; )  
 COMMERCIAL CARTAGE; OLYMPIC OIL )  
 COMPANY; RUTHERFORD/PACIFIC, INC.; )  
 Third Party Defendants. )

**NOTICE OF DISMISSAL OF**  
**THIRD PARTY DEFENDANT, PETROLEUM MARKETING CO.**

COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck  
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil  
 Procedure, and hereby dismisses its Third Party Complaint in relation to the Third Party  
 Defendant, Petroleum Marketing Co.

Respectfully Submitted,

DOYLE & HARRIS



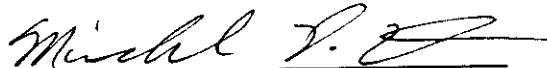
Steven M. Harris, OBA #3913  
Michael D. Davis, OBA #11282  
2431 East 61st Street  
Suite 260  
Tulsa, OK 74136  
(918) 743-1276

**CERTIFICATE OF MAILING**

I do hereby certify that on the 29<sup>\*</sup> day of April, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge  
SIDELY & AUSTIN  
2049 Century Park East  
Suite 3500  
Los Angeles, CA 90067

William Anderson  
DOERNER, STUART, et al.  
1000 Atlas Life Building  
415 S. Boston  
Tulsa, OK 74103



Steven M. Harris  
Michael D. Davis



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 29 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM,  
INC.,

Plaintiff,

vs.

No. 91-C-812-E

COASTAL CAR RENTAL & SALES,  
INC., et al.,

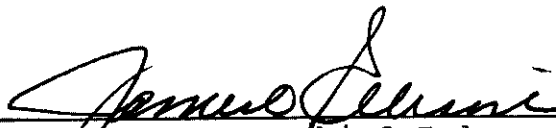
Defendants.

**ADMINISTRATIVE CLOSING ORDER**

The Defendants having filed their petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within twenty (20) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 28<sup>th</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 29 1992 *me*

DAVID A. WHITE,

Plaintiff,

v.

UNIVERSITY OF TULSA, et al,

Defendants.

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

90-C-421-*LB* ✓

**ORDER**

This order addresses the following motions, now before the court:

1. Defendants' Supplemental Application to Modify Discovery Order of July 11, 1991 (docket #154); and

2. Plaintiff's Motion to Compel (docket #161).

Each is addressed, in turn, below.

**Defendants' Supplemental Application to Modify Discovery Order of July 11, 1991**

Defendants move to modify the court's Discovery Order, filed July 11, 1991, which restricted use and dissemination of the transcript of the proceedings before the Oklahoma Bar Association concerning the application of Plaintiff to be admitted to practice. The July 11, 1991 Discovery Order prohibited use of the transcripts except for purposes of this trial and further prohibited disclosure of same to anyone not a party to this action for counsel for a party. Judgment in the action was entered February 26, 1992 (docket #151) and but for the question of attorney's fees and costs, the case is resolved.

The question becomes whether the **limitation** placed on disclosure of the transcripts should remain in effect after the close of **the case**. The rationale for limiting disclosure was stated in the Discovery Order:

**This limitation is imposed because of the potentially embarrassing nature of the materials, given that this case is yet in a discovery posture. Plaintiff should have a reasonable opportunity, upon conclusion of discovery to present to the court his motion in limine should he believe the materials are not properly part of this action at time of trial. To preserve this opportunity disclosure has been limited, as above.**

Plaintiff argues that Rule 14 of the *Rules Governing Admission to Practice Law* creates a privilege which restricts dissemination of the materials. That argument, however, was discussed in the July 11, 1991 Discovery Order and the finding then remains correct today -- no privilege is so created; and the only **limitation** created by Rule 14 is the restriction on the Oklahoma Bar Association. As **discussed** earlier, the Oklahoma Bar Association is required, by the terms of Rule 14, **release the transcript** in response to a lawfully issued subpoena. Such was the case here. In **response** to subpoena, the records were released and a protective order issued, to **apply, as set forth above**, during the pendency of discovery in this case.

Thereafter, Plaintiff White failed to appear for trial, though he did participate in the Pretrial Conference and well knew the **trial date**.<sup>1</sup> White did not succeed in limiting the scope of the trial nor of the evidence particularly found within the Oklahoma Bar Association transcript. This case is **now concluded** insofar as Judgment having been entered. There is, therefore, no reason to further limit disclosure of the transcript of the

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<sup>1</sup> Plaintiff orally moved to strike the trial date, which **motion** was denied, per Order of December 9, 1991.

Oklahoma Bar Association hearing on Plaintiff's fitness to practice law in Oklahoma; the rationale for limiting same having expired with the entry of judgment herein.

The July 11, 1991 Discovery Order is hereby modified to the extent that the transcript of the Oklahoma Bar Association hearing is no longer protected under the terms of the protective order set forth therein. The reasoning as regards the applicability and interpretation of Rule 14 is, however, re-adopted here.

Defendant's Supplemental Application to Modify Discovery Order of July 11, 1991 (docket #154) is granted, as above. Plaintiff requests this Order be stayed pending appeal. Given the nature of the application, the undersigned hereby stays this Order until May 11, 1992.

**Plaintiff's Motion to Compel**

Plaintiff moves to compel certain documents and transcripts from Defendants. Defendants have responded by providing same to Plaintiff. Plaintiff has filed his Notice of Defendants' Compliance with Motion to Compel (docket #172). Plaintiff announced at time of hearing that his Motion to Compel was mooted by Defendants' compliance. Accordingly, Plaintiff's Motion to Compel is hereby deemed **withdrawn** as moot.

SO ORDERED THIS 24<sup>th</sup> day of April, 1992.

  
JEFFREY S. WOLFE  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HARTFORD INSURANCE COMPANY OF  
THE MIDWEST, an Indiana  
corporation,

Plaintiff,

v.

JUDY JONES; JEFF JONES; JOY  
JONES; GLADYS JONES; WILLIAM W.  
SMITH; and FARMERS INSURANCE  
COMPANY, INC., a Kansas  
corporation,

Defendants.

No. 91-C-84-~~CE~~ /

**FILED**

APR 28 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

MEMORANDUM OF JUDGMENT

NOW on this 13th day of April, 1992, this matter comes on for trial before the Court, all parties having waived their right to trial by jury. Plaintiff, Hartford Insurance Company of the Midwest ("Hartford"), appeared by its representative and by its attorney of record, Galen L. Brittingham of the law firm of Thomas, Glass, Atkinson, Haskins, Nellis & Boudreaux, Tulsa, Oklahoma. Defendants, Judy Jones and Joy Jones appeared in person; Defendants, Jeff Jones and Gladys Jones appeared not; all the Jones Defendants appeared by their attorneys of record, Richard W. Lowry and Donna L. Smith of the law firm of Logan & Lowry. Defendant, William W. Smith, appeared in person and by his attorney of record, Eugene Robinson of the law firm of McGivern, Scott, Gilliard, McGivern & Robinson. After hearing testimony in open Court by Defendant, William W. Smith, and witnesses, Dortha Dawes and Shirley Poirier, and argument of counsel, and being fully advised in the premises, THE COURT FINDS:

## FINDINGS OF FACT

1. Defendant, William W. Smith, at the time of the September 20, 1989, accident which resulted in the death of Jerry Jones, had liability coverage under a contract of automobile liability insurance, policy number 55PHA590996, issued by Plaintiff, Hartford, which excluded "liability coverage for the ownership, maintenance or use of . . . any vehicle, other than your covered automobile which is . . . furnished or available for your regular use; . . .".

2. Defendant, William W. Smith, and Dortha Dawes are of advanced years and physically fragile, their relationship is that of companions and friends. Ms. Dawes characterized the relationship as "friend, companion and picker upper when he falls." Defendant, William W. Smith, distinguished the relationship from a marital relationship by noting he lived out of his suitcase when at her home, and could leave at any time he wanted.

3. Dortha Dawes, owner of the 1985 Ford LTD, which Defendant William W. Smith was driving at the time of the accident, controlled the use of and the right to use her vehicle. She kept the keys in her pocketbook and dispensed them to Defendant, William W. Smith, whenever he drove her car. She did not allow anyone to get into her pocketbook. Defendant, William W. Smith, could not use the vehicle without her permission and consent.

4. Defendant, William W. Smith, did not have the right to use Dortha Dawes 1985 Ford LTD when available and the 1985 Ford LTD was not furnished or available for his regular use.

### CONCLUSIONS OF LAW


1. Oregon law applies to this declaratory judgment action. The Hartford insurance policy was issued in Oregon. Neither Oklahoma public policy nor the relation of the parties and the subject matter to the State of Oklahoma indicate that Oklahoma law should apply.

2. Under Oregon law, the above-noted exclusion is not ambiguous.

3. Under Oregon law, "furnished for regular use" implies a right to regular use, if available and describes the opposite of temporary use.

4. Defendant, William W. Smith, did not have the right to use Dortha Dawes' 1985 Ford LTD when available, and the 1985 Ford LTD was not furnished or available for his regular use.

IT IS THEREFORE ORDERED that the policy provision excluding coverage for Defendant, William W. Smith's use of a non-owned vehicle, which was furnished or available for his regular use does not apply to the facts and circumstances of this case, and Defendant, William W. Smith had \$100,000.00 liability coverage under his policy of automobile liability insurance issued by Plaintiff, Hartford, for the accident of September 20, 1989, which resulted in the death of Jerry Jones.

  
JAMES O. ELLISON, JUDGE OF THE  
UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:



DONNA L. SMITH, Attorney for  
Defendants, Judy Jones, Jeff  
Jones, Joy Jones, and Gladys  
Jones



EUGENE ROBINSON, Attorney for  
Defendant, William W. Smith

6-37/GLB/mm



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN E. BURNS, et al.,

Plaintiffs,

v.

LIFELINE HEALTHCARE GROUP LTD.,  
et al.,

Defendants.

No. 90-C-705-B ✓

**FILED**

APR 23 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**ORDER**

Pursuant to the announcement of the parties' stipulation of dismissal with prejudice in open court on April 22, 1992, the Court hereby dismisses this case with prejudice.

IT IS SO ORDERED, this 23<sup>rd</sup> day of April, 1992.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANTHONY C. EVERSOLE, JR.,

Plaintiff,

vs.

OKLAHOMA OSTEOPATHIC  
FOUNDATION, et al.,

Defendants.

No. 91-C-944-E

FILED

APR 27 1992

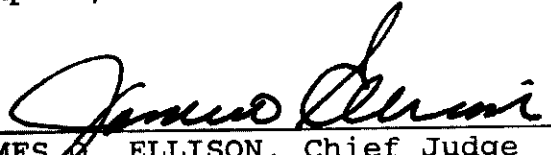
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ORDER OF REMAND

The Court has for consideration the issue of whether this matter should be remanded to state court. The action which underpins this lawsuit was a case charging negligence against Defendant hospital and was heard in state court in Anthony C. Eversole, Jr. v. Oklahoma Hospital Founders Association, an Oklahoma Corporation, d/b/a Oklahoma Osteopathic Hospital, et al., C.J. 85-4736, District Court in and for Tulsa County, State of Oklahoma. The issue raised in this case and in its related case, #91-C-911-E, concerns the proper distribution of attorney fees awarded in that case - a matter clearly ancillary to the negligence action itself. The Court has studied the record herein as well as the relevant authorities and concludes that this matter should be remanded as improperly removed.

IT IS THEREFORE ORDERED that this matter is hereby remanded.

ORDERED this 27<sup>th</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LAURIE C. FULBRIGHT,

Plaintiff,

vs.

DAVID O. HARRIS, individually  
and d/b/a DAVID O. HARRIS,  
P.C.,

Defendant.

No. 91-C-911-E ✓

FILED

APR 27 1992


Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ORDER

This matter came to the Court's attention by way of Plaintiff's Motion to Consolidate filed in Case #91-C-944-E. Upon review of the record of this case, #91-C-911-E, the Court has concluded that this matter should be dismissed and the related case, #91-C-944-E, remanded as improperly removed.

IT IS THEREFORE ORDERED that this matter is dismissed.

ORDERED this 24<sup>th</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

OKLAHOMA PLAZA INVESTORS,  
LTD.,

Debtor,

WAL-MART STORES, INC.,

Appellant,

OKLAHOMA PLAZA INVESTORS,  
LTD.,

Appellee.

Case No. 91-C-740-E

**FILED**

APR 27 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

ORDER DISMISSING APPEAL

On Joint Motion of Wal-Mart Stores, Inc., the Appellant in the above entitled proceeding, and Oklahoma Plaza Investors, Ltd., the Appellee in the above entitled proceeding, and the Court being fully advised; it is ORDERED that the appeal of the above entitled proceeding be, and the same hereby is, DISMISSED, pursuant to the provisions of Rule 8001(c) of the Bankruptcy Rules.

Dated this 24<sup>th</sup> day of April, 1992.

/s/ JAMES O. ELLISON

The Honorable James O. Ellison  
United States District Court  
Northern District of Oklahoma

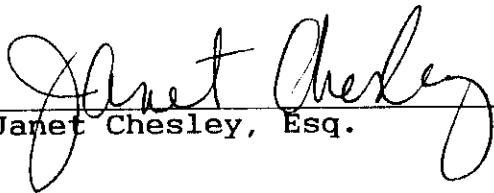
APPROVED FOR ENTRY:



Jon B. Comstock, Esq.

JON B. COMSTOCK & ASSOCIATES  
601 S. Boulder, Suite 412  
Tulsa, Oklahoma 74119

Attorney for Appellant, Wal-Mart Stores, Inc.



Janet Chesley, Esq.

NAIFEH & WOSKA  
100 Colcord Building  
15 North Robinson  
Oklahoma City, Oklahoma 73102

Attorney for Appellee, Oklahoma Plaza Investors, Ltd.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ELAINE K. CAVANAUGH,

Plaintiff,

vs.

THE UNIVERSITY OF TULSA,  
an Oklahoma Educational  
Corporation,

Defendant.

Case No. 91-C-725-E

FILED

APR 27 1992

Edward M. Lawrence, Jr.  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties having settled the action, they stipulate that the action may be dismissed with prejudice, and pray for an order so dismissing it.

Respectfully submitted,

Elaine K. Cavanaugh  
Elaine K. Cavanaugh

D. Gregory Bledsoe  
D. Gregory Bledsoe

The University of Tulsa

By David B. McKinney  
General Counsel

David B. McKinney  
David B. McKinney  
of BOESCHE, McDERMOTT & ESKRIDGE  
Attorneys for The University of Tulsa

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 24 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

LOIS MCLAIN,

Plaintiff,

vs.

No. 89-C-295-E

WILLIAM S. ABSHIRE, RICHARD  
and SHEARSON STROUD,  
LEHMAN HUTTON, INC.,


Defendants.

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within 20 days that settlement has not been completed and further litigation is necessary.

ORDERED this 23rd day of April 1992.

  
CHIEF JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 24 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DOBIE LANGENKAMP, et al.,

Plaintiffs,

vs.

No. 91-C-257-E

HERBERT LINDLEY a/k/a

R. H. LINDLEY, et al.,

Defendants.

**ORDER**

R. H. Lindley's motion for reconsideration of this Court's Order of February 5, 1992, is before the Court. By way of clarification, the Court would simply note that its Order denying Lindley's motion for withdrawal of reference was based upon evidence that he had filed a claim against the RFC Estate; therefore he is not entitled to a jury trial. See Exhibit "6" attached to Plaintiff's Response in Opposition to Ralph Herbert Lindley's Motion for Withdrawal of Reference, docket number 12 herein. The teachings of Langenkamp v. Culp, 111 S.Ct. 330 (1990) are conclusive on this threshold issue and it is thus unnecessary to reach the issue of concurrency identified by Lindley.

IT IS THEREFORE ORDERED that this Court's Order of February 5, 1992, is hereby reaffirmed.

So ORDERED this 23<sup>rd</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 24 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

MARCUS ELWAYNE PARTEE,

Plaintiff,

vs.

No. 91-C-304-E

CITY OF TULSA, et al.,

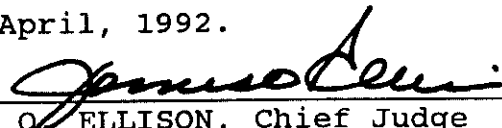
Defendants.

**ORDER**

The Court has for consideration the Motion for Summary Judgment filed by Defendants City of Tulsa and Drew Diamond. Because Plaintiff failed to comply with the procedural prerequisites of the Oklahoma Governmental Tort Claims Act, 51 O.S. §151 et seq. his Third Count, relative to state tort law must be dismissed. Further, Plaintiff's claim against Police Chief Drew Diamond is insufficient to state a claim against Diamond, personally, and should also be dismissed. However, disputes of material facts remain as to Plaintiff's federal claim against the City of Tulsa. Therefore dismissal of that claim would not be appropriate.

IT IS THEREFORE ORDERED that the Motion for Summary Judgment filed by Defendants City of Tulsa and Drew Diamond is granted as to Drew Diamond, individually, granted as to state tort claims alleged against the City of Tulsa, denied as to Plaintiff's federal claim against the City of Tulsa.

So ORDERED this 23<sup>rd</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 24 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

RED WING PRODUCTS, INC.,

Plaintiff,

vs.

No. 91-C-369-E

THE AERO ELECTRIC CONNECTOR  
COMPANY, INC.,

Defendant.

CORRECTED ORDER

Comes now before the Court for consideration Defendant's motion to dismiss, or alternatively to transfer to Central District of California. After review of the instant record, the Court finds Defendant's motion to dismiss should be granted based on the Court's lack of personal jurisdiction.

Based on the record, the Court finds Plaintiff has not established a prima facie showing of "minimum contacts" to establish personal jurisdiction. International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

IT IS THEREFORE ORDERED that Defendant's motion to dismiss is granted based on the Court's lack of personal jurisdiction.

IT IS FURTHER ORDERED that Court's Order entered April 14, 1992, and the Court's Corrected Order entered April 21, 1992 are vacated.

ORDERED this 24<sup>th</sup> day of April, 1992.

A handwritten signature in cursive script, reading "James O. Ellison", written over a horizontal line.

JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 24 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

THOMAS E. HEALION,  
Plaintiff,

vs.

No. 91-C-414-E

HARRY W. BUFFINGTON and LESLIE  
W. MILLER, Individually and  
as former Trustees of the  
Nat'l Football,  
Defendants.

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within <sup>20</sup> days that settlement has not been completed and further litigation is necessary.

ORDERED this 23rd day of April 1992.

  
CHIEF JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.

DAVID LEE STOTT; BRENDA STOTT  
a/k/a BRENDA A. TAYLOR;  
CITY FINANCE COMPANY OF OKLAHOMA,  
INC.; MID AMERICA CONSTRUCTION &  
SUPPLY; UNION MORTGAGE COMPANY,  
INC.; COUNTY TREASURER, Tulsa  
County, Oklahoma; BOARD OF  
COUNTY COMMISSIONERS, Tulsa  
County, Oklahoma; and OTASCO,  
INC., a corporation,  
  
Defendants.

FILED

APR 24 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 91-C-570-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day  
of April, 1992. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
J. Dennis Semler, Assistant District Attorney, Tulsa County,  
Oklahoma; the Defendant, City Finance Company of Oklahoma, Inc.,  
appears by its vice president Chris Sanchez; the Defendant,  
Mid America Construction & Supply, appears not, having previously  
filed its Disclaimer; the Defendant, Otasco, Inc., a corporation,  
appears by its attorney K. Jack Holloway; and the Defendants,  
David Lee Stott, Brenda Stott a/k/a Brenda A. Taylor, and Union  
Mortgage Company, Inc., appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, David Lee Stott, was served with Summons and Complaint on September 13, 1991; that the Defendant, Brenda Stott a/k/a Brenda A. Taylor, was served with Summons and Amended Complaint on December 4, 1991; that the Defendant, City Finance Company of Oklahoma, Inc., acknowledged receipt of Summons and Complaint on August 7, 1991; that the Defendant, Mid America Construction & Supply, acknowledged receipt of Summons and Complaint on September 6, 1991; that the Defendant, Union Mortgage Company, Inc., acknowledged receipt of Summons and Complaint on September 13, 1991; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 7, 1991; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 7, 1991.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 27, 1991; that the Defendant, Mid America Construction & Supply, filed its Disclaimers on November 12, 1991 and November 22, 1991; that the Defendant, Otasco, Inc., a corporation, filed its Entry of Appearance and Answer on December 4, 1991; and that the Defendants, David Lee Stott, Brenda Stott a/k/a Brenda A. Taylor, and Union Mortgage Company, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage

securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South One Hundred Fourteen (114) feet of the East One Hundred Seventy (170) feet of Lot One (1), Block Eight (8), MARYLAND GARDENS ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that David Lee Stott and Betty J. Stott, husband and wife, became the record owners of the real property involved in this action by virtue of that certain General Warranty Deed dated January 5, 1981, from James Perry Melone, III and Jeanne Marie Melone, husband and wife, to David Lee Stott and Betty J. Stott, husband and wife, as joint tenants, and not as tenants in common, on the death of one the survivor, the heirs and assigns of the survivor, to take the entire fee simple title, which General Warranty Deed was filed of record on January 8, 1981, in Book 4520, Page 327, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on January 5, 1981, David Lee Stott and Betty J. Stott executed and delivered to Charles F. Curry Company, their mortgage note in the amount of \$39,500.00, payable in monthly installments, with interest thereon at the rate of 13.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, David Lee Stott and Betty J. Stott executed and delivered to Charles F. Curry Company, a real

estate mortgage dated January 5, 1981, covering the above-described property. Said mortgage was recorded on January 8, 1981, in Book 4520, Page 336, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 18, 1990, Charles F. Curry Company assigned the above described mortgage to the Secretary of Veterans Affairs. This Assignment of Mortgage was recorded on May 7, 1990, in Book 5251, Page 1515, in the records of Tulsa County, Oklahoma.

The Court further finds that Betty J. Stott died on or about May 21, 1984. Upon the death of Betty J. Stott, the subject property vested in her surviving joint tenant, David Lee Stott, by operation of law. On October 26, 1989, a Decree Determining Death and Terminating Joint Tenancy was filed in Case No. P-89-785, in the District Court in and for Tulsa County, State of Oklahoma, determining that Betty J. Stott died on the 21st day of May, 1984, and that upon her said demise all her right, title and interest in and to the above described real property terminated and deceased and determining that David Lee Stott is the survivor of said joint tenancy, and as such takes all the title under the terms of the said deed hereinbefore referred to. A certified copy of this decree was recorded on October 26, 1989, in Book 5216, Page 730 in the Office of the County Clerk, Tulsa County, State of Oklahoma.



The Court further finds that the Defendant, David Lee Stott, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, David Lee Stott, is indebted to the Plaintiff in the principal sum of \$45,653.21, plus interest at the rate of 13.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$31.88 (\$20.00 docket fees, \$11.88 fees for service of Summons and Complaint).

The Court further finds that the Defendant, Otasco, Inc., a corporation, has a lien on the subject property in the amount of \$698.00 with interest thereon at the rate of 11.710 percent as provided by law from April 4, 1991, by virtue of a Judgment (Decision By The Court), Case No. SC-91-03477, District Court, Tulsa County, Oklahoma, dated April 4, 1991, and recorded on April 9, 1991, in Book 5313, Page 2557 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Brenda Stott a/k/a Brenda A. Taylor and Union Mortgage Company, Inc., are in default and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, City Finance Company of Oklahoma, Inc., releases the Real Estate Mortgage, dated June 2, 1987, and recorded on June 3, 1987, in Book 5027, Page 1923 in the records of Tulsa County, Oklahoma, as

to the above-described property and therefore claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Mid America Construction & Supply, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, David Lee Stott, in the principal sum of \$45,653.21, plus interest at the rate of 13.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.55 percent per annum until paid, plus the costs of this action in the amount of \$31.88 (\$20.00 docket fees, \$11.88 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Otasco, Inc., a corporation, have and recover judgment in the amount of \$698.00 with interest thereon at the rate of 11.710 percent as provided by law from April 4, 1991, by virtue of a Judgment (Decision By The Court), Case No. SC-91-03477, District Court, Tulsa County, Oklahoma, dated April 4, 1991, and

recorded on April 9, 1991, in Book 5313, Page 2557 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Brenda Stott a/k/a Brenda A. Taylor, City Finance Company of Oklahoma, Inc., Mid America Construction & Supply, Union Mortgage Company, Inc., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, David Lee Stott, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

**First:**

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

**Second:**

In payment of the judgment rendered herein in favor of the Plaintiff;

**Third:**

In payment of the judgment rendered herein in favor of the Defendant, Otasco, Inc., a corporation.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELISON


UNITED STATES DISTRICT JUDGE

APPROVED:

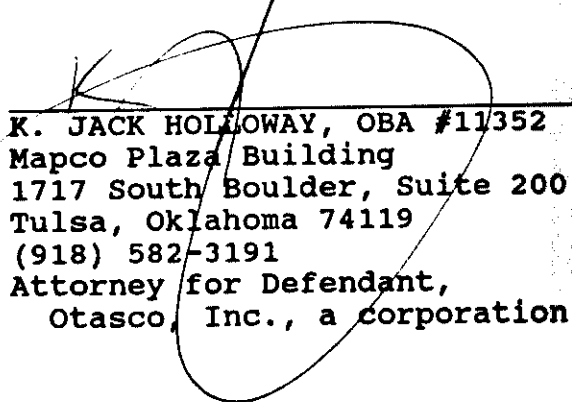
TONY M. GRAHAM  
United States Attorney



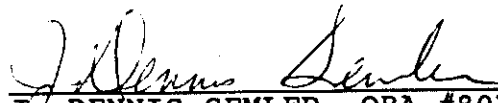
PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



CHRIS SANCHEZ  
1249 South Harvard  
Tulsa, Oklahoma 74112  
(918) 834-0871  
Vice President of Defendant,  
City Finance Company of Oklahoma, Inc.



K. JACK HOLLOWAY, OBA #11352  
Mapco Plaza Building  
1717 South Boulder, Suite 200  
Tulsa, Oklahoma 74119  
(918) 582-3191  
Attorney for Defendant,  
Otasco, Inc., a corporation



J. DENNIS SEMLER, OBA #8076  
Assistant District Attorney  
406 Tulsa County Courthouse  
Tulsa, Oklahoma 74103  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 91-C-570-E

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PENNWELL PUBLISHING COMPANY, )

Plaintiff, )

vs. )

No. 91-C-977-E

INTERNATIONAL EXHIBITIONS, )  
INC., a/k/a OR d/b/a )

I.E.I. PUBLISHING DIVISION OF )  
SPEARHEAD COMMUNICATIONS, LTD.)

Defendant. )

O R D E R

**FILED**


APR 24 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

The Court has for consideration the Motion to Dismiss filed by Defendant. The Court has reviewed the record and finds ample evidence of a judiciable controversy. Pursuant to the guidance afforded by the Circuit in Kunkel v. Continental Casualty Co., 866 F.2d 1269 (10th Cir. 1989) the Court has determined that this declaratory action should be heard.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is denied.

ORDERED this 23<sup>rd</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 24 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STEVE HOLLAND,

Plaintiff,

vs.

AMERICAN MEGATRENDS, INC.,

Defendant.

No. 92-C-56-E

**ORDER**

This matter is before the Court on Defendant's Motion to Dismiss. The Court has reviewed the record and finds the motion should be denied. Burger King Corp. v. Rudzewicz, 105 S.Ct. 2174 (1985); Kennedy v. Freeman, 919 F.2d 126 (10th Cir. 1990); Rambo v. American Southern Ins. Co., 839 F.2d 1415 (10th Cir. 1988); Brainerd v. Governors of the University of Alberta, 873 F.2d 1257 (9th Cir. 1989).

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is denied.

ORDERED this 23<sup>rd</sup> day of April, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 24 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

PIPELINES LOCAL UNION NO. 798, )  
Plaintiff, )  
vs. )  
MECHANICAL WELDING, INC., )  
Defendant. )

No. 91-C-590-E

ADMINISTRATIVE CLOSING ORDER

The Defendant Mechanical Welding, Inc., having filed a Chapter 7 petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 23rd day of April 1992.

  
CHIEF JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FRAZIER, JR.; ELISA R.  
FRAZIER; COUNTY TREASURER,  
Tulsa County, Oklahoma; and  
BOARD OF COUNTY COMMISSIONERS,  
Tulsa County, Oklahoma,

Defendants.

FILED

APR 24 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 92-C-045-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day  
of April, 1992. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Wyn Dee Baker, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear not, having previously disclaimed any right,  
title or interest in the subject property; and the Defendants,  
George Frazier, Jr. and Elisa R. Frazier, appear not, but make  
default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, George Frazier, Jr.,  
acknowledged receipt of Summons and Complaint on March 20, 1992;  
that the Defendant, Elisa R. Frazier, acknowledged receipt of  
Summons and Complaint on March 20, 1992; that Defendant, County  
Treasurer, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on January 22, 1992; and that Defendant,  
Board of County Commissioners, Tulsa County, Oklahoma,

acknowledged receipt of Summons and Complaint on January 22, 1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on February 11, 1992, disclaiming any right, title or interest in the subject property; the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on February 11, 1992, disclaiming any right, title or interest in the subject property; and that the Defendants, George Frazier, Jr. and Elisa R. Frazier, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), in Block One (1), of BUENOS VISTA SUBDIVISION, an Addition to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on August 9, 1985, the Defendants, George Frazier, Jr. and Elisa R. Frazier, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$31,500.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, George Frazier, Jr. and Elisa R. Frazier, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 9, 1985, covering the above-described property. Said mortgage was recorded on August 12, 1985, in Book 4883, Page 2103, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, George Frazier, Jr. and Elisa R. Frazier, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, George Frazier, Jr. and Elisa R. Frazier, are indebted to the Plaintiff in the principal sum of \$30,634.88, plus interest at the rate of 11.5 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, George Frazier, Jr. and Elisa R. Frazier, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, George Frazier, Jr. and Elisa R. Frazier, in the principal sum of \$30,634.88, plus interest at the rate of 11.5 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.55 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, George Frazier, Jr., Elisa R. Frazier, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, George Frazier, Jr. and Elisa R. Frazier, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

**First:**

In payment of the costs of this action  
accrued and accruing incurred by the

Plaintiff, including the costs of sale of  
said real property;

**Second:**

In payment of the judgment rendered herein  
in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the  
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from  
and after the sale of the above-described real property, under  
and by virtue of this judgment and decree, all of the Defendants  
and all persons claiming under them since the filing of the  
Complaint, be and they are forever barred and foreclosed of any  
right, title, interest or claim in or to the subject real  
property or any part thereof.

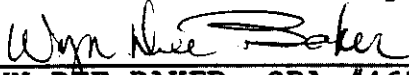
S/ JAMES D. ELISON

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UNITED STATES DISTRICT JUDGE

**APPROVED:**

TONY M. GRAHAM  
United States Attorney

  
WYN DEE BAKER, OBA #465  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

Judgment of Foreclosure  
Civil Action No. 92-C-045-E

WDB/esr

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SONNY BUZZARD, GARY FORREST,  
DAN HAYES, DAYTON HOLT, AUSTIN  
KETCHER, ROGER LIMORE, NORMAN  
LITTLEDAVE, BOBBY MAYFIELD,  
DIANNA MAYFIELD, ADALENE SMITH,  
ROBERTA SMOKE, CAROL STACY,  
PEGGY STEPP, MARY STIGLETS,  
TABBIE HESS, J. L. BARNETT,  
Smokeshop Managers and Licensees;  
THE UNITED KEETOOWAH SMOKESHOP  
ASSOCIATION, an unincorporated  
Indian Organization,

Plaintiffs,

v.

No. 90-C-848-B ✓

THE OKLAHOMA TAX COMMISSION;  
ROBERT ANDERSON, Chairman of the  
Tax Commission, ROBERT L. WADLEY,  
Vice Chairman of the Tax Commis-  
sion; and DON KILPATRICK,  
Secretary of the Tax Commission;  
JON D. DOUTHITT, District Attorney  
for Delaware and Ottawa Counties,  
Oklahoma; JIM EARP, Sheriff for  
Delaware County, Oklahoma; GERALD  
HUNTER, District Attorney for  
Adair, Cherokee, Wagoner, and  
Sequoyah Counties, Oklahoma;  
W. A. "DREW" EDMONDSON, District  
Attorney for Muskogee County,  
Oklahoma; PATRICK R. ABITOL,  
District Attorney for Rogers,  
Mayes, and Craig Counties,  
Oklahoma; and their successors  
in office,

Defendants.

FILED

APR 28 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA


ORDER

Before the Court is the Motion for Injunction Pending Appeal pursuant to Fed.R.Civ.P. 62(c) filed by the plaintiff, the United Keetoowah Band of Cherokee Indians (the "UKB"). The UKB requests the Court to stay and enjoin the State of Oklahoma, pending appeal,

from enforcing its taxing statutes in smokeshops owned and licensed by the UKB and located within the boundaries of the original Cherokee Indian Reservation.

The Court heard oral argument on the motion on April 22, 1992. At the hearing, the parties informed the Court that they could not reach an agreement concerning a stay during appeal or the posting of a bond pending appeal. Having concluded that the plaintiff/appellant is not likely to succeed on the merits of the case on appeal and noting that the plaintiff/appellant stated it was not financially capable of posting an appropriate security bond, the Court overrules the plaintiff's motion.

IT IS SO ORDERED, this 23<sup>rd</sup> day of April, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 23 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

TEDDY L. WILSON,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D.,

Defendant.

91-C-348-E

**ORDER**

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed March 31, 1992 in which the Magistrate Judge recommended that this case be remanded to the **Secretary** in order to more fully develop the record concerning Wilson's past relevant work in the occupation discussed above; and whether in fact, Wilson could financially afford to buy a "hot dog stand" such as he once owned.

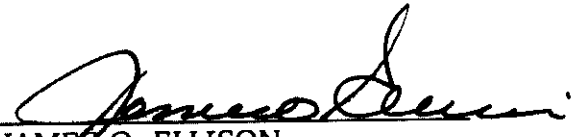
No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that this case is remanded to the Secretary in order to more fully develop the record concerning Wilson's past relevant work in the occupation discussed above; and whether in fact, Wilson could financially afford to buy a "hot dog stand" such as he once owned.



Dated this 22nd day of April, 1992.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 23 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DAVID LEE WILLIS,  
Plaintiff,

vs.

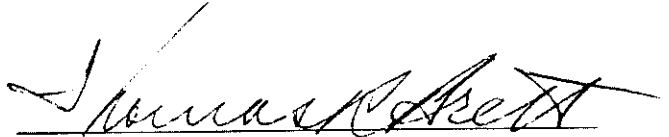
MIDLAND RISK INSURANCE COMPANY,  
Defendant.

No. 92-CIV-244-B

**ORDER OF DISMISSAL WITH PREJUDICE  
OF THIRD-PARTY CLAIM, ONLY**

The Joint Application for Dismissal With Prejudice of Third Party Claim, only, comes on for consideration before me, the undersigned Judge of this United States District Court, and for good cause shown, the Joint Application should be and is hereby approved. The third party claim by Midland Risk Insurance Company against the Rogers County Insurance Agency should be and is hereby dismissed with prejudice, each party to pay their costs.

SO ORDERED this 22 day of April, 1992.

  
UNITED STATES DISTRICT JUDGE

606  
4-24

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

MILTON D. McKENZIE,

Debtor.

MILTON D. McKENZIE,

Appellant,

v.

FRED W. WOODSON, TRUSTEE,

Appellee.

Bky. No. 88-00194-C

Case No. 91-C-843-B

**FILED**

APR 28 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**ORDER**

This order pertains to debtor's **appeal** from the Order of the Bankruptcy Court for the Northern District of Oklahoma **denying** Debtor's Application to File Proof of Claim on Behalf of Internal Revenue Service **Pursuant** to 11 U.S.C. § 501(c) entered on October 21, 1991. The Debtor filed a petition **seeking** Chapter 7 bankruptcy relief on January 29, 1988, listing on Schedule A-1 of the **petition** a debt to the Internal Revenue Service (IRS) in the amount of \$132,000.00. At **no time** during the administration of the Chapter 7 proceedings was a motion or complaint **pursuant** to 11 U.S.C. § 505 brought to determine the amount of the liability to the IRS.

Debtor's proceeding was **scheduled** as a "No Asset" case, but after examination of the Debtor's bankruptcy schedules, the **Trustee** retained counsel and began transactions to bring monies into the estate. The **Debtor** and his creditors were notified on October 14, 1988 that this was an asset case and **that they** could file Proofs of Claim on or before

1/18/92  
908-20

January 12, 1989. Claims received after ~~that~~ were to be considered filed out of time and not allowed.

The IRS did not file a Proof of Claim on or before January 12, 1989, and the Debtor did not file a claim on behalf of the IRS ~~within~~ 30 days after expiration of the time to file claims under Bankruptcy Rule 3004.

For over two years the Debtor's ~~case~~ was liquidated. Creditors retained counsel, attended hearings, and aided the Trustee to ~~share~~ in the final distribution of assets. In the summer of 1991, the Trustee completed ~~liquidation~~ of the assets, and began to close the estate and distribute assets to the creditors. The Trustee filed his Final Account and Application for Discharge on June 26, 1991, and a Notice of Hearing on July 30, 1991 on the Trustee's Final Account was mailed to ~~all~~ interested parties (including the Debtor).

On July 30, 1991, a hearing was ~~held~~ for the Final Accounting. Debtor requested an opportunity to file an application to ~~file~~ a proof of claim on behalf of the IRS pursuant to 11 U.S.C. § 501(c), and the request was ~~granted~~. On August 8, 1991, the Debtor filed an Application to File a Proof of Claim on Behalf of Internal Revenue Service - thirty months after the time to file claims had ~~expired~~. On September 13, 1991, the bankruptcy judge denied the Request. The order is ~~now~~ the subject of this appeal.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly ~~erroneous~~" standard does not apply to review of mixed questions of law and fact, which ~~are~~ subject to the do novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d

677, 679 (10th Cir. 1987). This appeal **challenges** the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

Title 11 of the Bankruptcy Code, § 726, requires that a claim be filed to receive part of the distribution of a bankruptcy estate. This section states that "property of the estate shall be distributed, 1) first, in payment of **claims** of the kind specified in, and in the order specified in, section 507 of this title...." Section 507 of Title 11 pertains to the priority of claims. Administrative expenses receive **first** priority and the seventh priority listed is "allowed unsecured claims of **governmental units**; only to the extent that such claims are for - (A) a tax on or measured by income or gross receipts...." Tax claims by the IRS are included in this description.

A tax claim has to be filed to be **allowed** under § 502 of Title 11: "A claim or interest, proof of which is filed under **section 501** of this title, is deemed allowed, unless a party in interest ... objects." If a **claim** is not allowed, it will not be included in the distribution of estate assets. Under § 502(c), "there shall be estimated for purpose of allowance under this section - (1) any **contingent** or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case...."

Bankruptcy Rule 3002 requires an **unsecured** creditor to file a proof of claim. If a creditor does not file a proof of claim, **the** debtor may file it. Rule 3004 states: "If a creditor fails to file a proof of claim **on or before** the first date set for the meeting of creditors called pursuant to § 341(a) of **the** Code, the debtor or trustee may do so in the name of the creditor, within 30 days **after expiration** of the time for filing claims...." In this

case, the creditors and debtor were notified that proofs of claim were to be filed on or before January 12, 1989. No claim was filed for the debt to the IRS by that date and no claim was filed within thirty days after that date by the debtor.

Debtor contends that § 726 provides a distinction between priority unsecured creditors and general unsecured creditors, in that § 726(a)(1) says priority unsecured claims are to be paid first, without saying such claims must be timely filed, while § 726(a)(2) says allowed unsecured claims are to be paid second: "second, in payment of any allowed unsecured claim ... proof of which is - (A) timely filed..." Section 507 also does not require timely filing of priority unsecured claims, but merely sets priority of "allowed" claims. Because timely filing is not mentioned, debtor argues that a priority unsecured claim does not need to be timely filed to be allowed. Debtor alleges the presumption in § 502 is that any claim filed is allowed, and because § 726 and § 502 of Title 11 are statutes, they control over Rule 3004, which is arguably inconsistent because it does plainly require timely filing.<sup>1</sup> Debtor argues that 11 U.S.C. § 2075 says that bankruptcy rules "shall not abridge, enlarge or modify any substantive right", and the right of a priority unsecured creditor to file a claim cannot be limited by a rule that requires timely filing. Because debtor sought to file the unsecured priority tax claim prior to the distribution, debtor claims the court erred in refusing to allow the filing. There is no case law supporting his position.

---

<sup>1</sup> Rule 3004 provides:

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor, within 30 days after expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. A proof of claim filed by a creditor pursuant to Rule 3002 or Rule 3003(c) shall supersede the proof filed by the debtor or trustee. (Emphasis added).

Debtor's argument that he has a substantive right to delay filing of an unsecured priority tax claim until immediately before distribution of the estate is strained. Such a right is not set out plainly by statute. Instead, debtor can only infer that such a right exists by virtue of the wording of § 726, and in particular the lack of a "timely filed" requirement in § 726(a)(1). When read in its entirety, the Bankruptcy Code does not provide the debtor under these circumstances the right to throw a monkey wrench into the works at the last possible moment before distribution. Instead it provides a method with which to ascertain the amount of a contingent tax claim, so that it can be filed on a timely basis, and the estate then distributed in an orderly, predictable way that protects the substantive rights of all creditors.

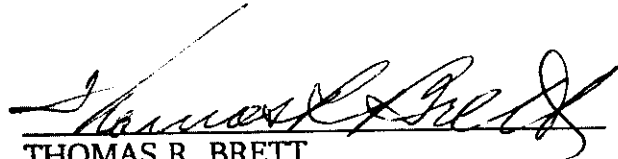
Title 11 U.S.C. § 505 allows the bankruptcy court to "determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction." Debtor could have filed his claim for an estimated amount under § 502(c), or he could have asked the bankruptcy court to determine the amount of the tax under § 505 and then filed a claim for that amount. He chose not to do so, but to ascertain the amount of tax owed by other, more lengthy administrative and judicial means.

This choice caused the amount of the tax claim to remain uncertain past the filing deadline provided by Rule 3004. Debtor cannot argue that Rule 3004 is unreasonable or prematurely cuts off the substantive right provided by § 501(c) for him to file a claim on behalf of the IRS. He had a reasonable opportunity to do this, but affirmatively chose not

to. The Bankruptcy Court's decision **complied** with statutes enacted by Congress and the rules promulgated by the U. S. Supreme **Court**. Rule 3004 fits into the statutory scheme without causing an abridgement of any **substantive** statutory right and does not, therefore run afoul of 11 U.S.C. § 2075.

The Bankruptcy Court's Order of **October 21**, 1991 is affirmed.

Dated this 22<sup>nd</sup> day of Apr-, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



RECEIVED

APR 22 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

- DOCKET NO. 875

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

(SEE ATTACHED SCHEDULE CTO-15)

92-c-95-B ✓

**CONDITIONAL TRANSFER ORDER**

On July 29, 1991, the Panel transferred 27,696 civil actions to the United States District Court for the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 4,500 additional actions have been transferred to the Eastern District of Pennsylvania. With the consent of that court, all such actions have been assigned to the Honorable Charles R. Weiner.

It appears that the actions listed on the attached schedule involve questions of fact which are common to the actions previously transferred to the Eastern District of Pennsylvania and assigned to Judge Weiner.

Pursuant to Rule 12 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 120 F.R.D. 251, 258, the actions on the attached schedule are hereby transferred under 28 U.S.C. §1407 to the Eastern District of Pennsylvania for the reasons stated in the opinion and order of July 29, 1991, (771 F.Supp. 415), as corrected on October 1, 1991, October 18, 1991, November 22, 1991, December 9, 1991, January 16, 1992, and March 5, 1992, with the consent of that court, assigned to the Honorable Charles R. Weiner.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

*Patricia D. Howard*  
Patricia D. Howard  
Clerk of the Panel

INASMUCH AS NO OBJECTION IS  
AT THIS TIME THE STAY IS LIFTED AND  
THIS ORDER BECOMES EFFECTIVE

APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

THIS COPY CERTIFIED TO FROM THE RECORD  
4/30/92  
DEPUTY CLERK, UNITED STATES DISTRICT  
COURT, EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17

ATTEST *Patricia D. Howard*  
FOR THE JUDICIAL PANEL OF  
MULTIDISTRICT LITIGATION

DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#
IN.,S.	1	91-1650	NC.,E.	7	91-95	SC.	2	92-654			
IN.,S.	1	91-1651	NC.,E.	7	91-110	SC.	2	92-679			
IN.,S.	1	91-1652	NC.,E.	7	91-120	SC.	2	92-680			
IN.,S.	1	91-1653				SC.	2	92-697			
IN.,S.	1	91-1654	NORTH CAROLINA WESTERN			SC.	2	92-714			
IN.,S.	1	91-1655	NC.,W.	3	92-14	SC.	2	92-715			
IN.,S.	1	91-1656	NC.,W.	3	92-36	SC.	2	92-716			
IN.,S.	1	91-1657	NC.,W.	5	92-15	SC.	2	92-717			
IN.,S.	1	91-1658									
IN.,S.	1	91-1659	NEW HAMPSHIRE			TENNESSEE EASTERN					
IN.,S.	1	91-1660	NH.	1	92-139	TN.,E.	1	91-174			
IN.,S.	1	91-1661				TN.,E.	1	91-175			
IN.,S.	1	91-1662	NEW JERSEY			TN.,E.	1	91-176			
IN.,S.	1	91-1663	NJ.	1	92-1262	TN.,E.	1	91-178			
IN.,S.	1	91-1664	<del>NJ.</del>	<del>2</del>	<del>92-1263</del> <i>app. 4/16/92</i>	TN.,E.	1	91-179			
IN.,S.	1	91-1665	NJ.	2	91-5420						
IN.,S.	1	91-1666	NJ.	2	91-5421	TEXAS EASTERN					
IN.,S.	1	91-1667	NJ.	2	91-5422	TX.,E.	1	78-312			
IN.,S.	1	91-1668	NJ.	2	91-5423	TX.,E.	1	86-297			
IN.,S.	1	91-1669	NJ.	2	92-532	TX.,E.	1	89-181			
IN.,S.	1	91-1670	<del>NJ.</del>	<del>2</del>	<del>92-531</del> <i>Section 4-1692</i>						
IN.,S.	1	91-1671	NJ.	2	92-836	TEXAS WESTERN					
IN.,S.	1	91-1672	NJ.	2	92-837	TX.,W.	6	87-60			
IN.,S.	1	91-1673	NJ.	3	92-1155						
IN.,S.	1	91-1674	NJ.	3	92-1199	WASHINGTON WESTERN					
IN.,S.	1	91-1675	NJ.	3	92-1200	WA.,W.	3	92-5035			
IN.,S.	1	91-1676									
IN.,S.	1	91-1677	OKLAHOMA NORTHERN								
IN.,S.	1	91-1678	OK.,N.	4	92-62						
IN.,S.	1	91-1679	OK.,N.	4	92-90						
IN.,S.	1	91-1680	OK.,N.	4	92-91						
IN.,S.	1	91-1681	OK.,N.	4	92-92						
IN.,S.	1	91-1682	OK.,N.	4	92-93						
IN.,S.	1	91-1683	OK.,N.	4	92-94						
IN.,S.	1	91-1684	OK.,N.	4	92-95						
IN.,S.	1	91-1685									
IN.,S.	1	91-1686	OREGON								
IN.,S.	1	91-1687	OR.	3	92-159						
IN.,S.	1	91-1688									
IN.,S.	1	91-1689	RHODE ISLAND								
IN.,S.	1	91-1690	RI.	1	92-97						
IN.,S.	1	91-1691									
IN.,S.	1	91-1692	SOUTH CAROLINA								
IN.,S.	1	91-1693	SC.	1	91-1442						
IN.,S.	1	91-1694	SC.	2	92-399						
IN.,S.	1	91-1695	SC.	2	92-440						
<del>IN.,S.</del>	<del>3</del>	<del>91-150</del> <i>app. 4/14/92</i>	SC.	2	92-441						
<del>IN.,S.</del>	<del>3</del>	<del>91-172</del> <i>app. 4/14/92</i>	SC.	2	92-498						
			SC.	2	92-560						
KANSAS			SC.	2	92-573						
KS.	6	92-1084	SC.	2	92-574						
KS.	6	92-1085	SC.	2	92-577						
			SC.	2	92-578						
MISSOURI WESTERN			SC.	2	92-579						
MO.,W.	4	92-210	SC.	2	92-587						
			SC.	2	92-588						
NORTH CAROLINA EASTERN			SC.	2	92-589						
NC.,E.	2	91-66	SC.	2	92-600						
NC.,E.	4	91-148	SC.	2	92-601						
NC.,E.	4	92-6	SC.	2	92-602						
NC.,E.	4	92-9	SC.	2	92-603						
NC.,E.	4	92-15	SC.	2	92-631						
NC.,E.	5	92-178	SC.	2	92-647						

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APR 22 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

- DOCKET NO. 875

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

(SEE ATTACHED SCHEDULE CTO-15)

92-C-90-E ✓

**CONDITIONAL TRANSFER ORDER**

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FOR THE PANEL:

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Clerk of the Panel

INASMUCH AS NO OBJECTION IS  
AT THIS TIME THE STAY IS LIFTED AND  
THIS ORDER BECOMES EFFECTIVE

APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

TRUE COPY CERTIFIED TO FROM THE RECORD  
4/15/92  
DEPUTY CLERK, UNITED STATES DISTRICT  
COURT, EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17 1992

ATTEST *Patricia D. Howard*  
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MULTIDISTRICT LITIGATION

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IN.,S.	1	91-1652	NC.,E.	7	91-120	SC.	2	92-680			
IN.,S.	1	91-1653				SC.	2	92-697			
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IN.,S.	1	91-1655	NC.,W.	3	92-14	SC.	2	92-715			
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IN.,S.	1	91-1658									
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IN.,S.	1	91-1660	NH.	1	92-139	TN.,E.	1	91-174			
IN.,S.	1	91-1661				TN.,E.	1	91-175			
IN.,S.	1	91-1662	NEW JERSEY			TN.,E.	1	91-176			
IN.,S.	1	91-1663	NJ.	1	92-1262	TN.,E.	1	91-178			
IN.,S.	1	91-1664	<del>NJ.</del>	<del>2</del>	<del>92-1763</del> <i>opp. 4/16/92</i>	TN.,E.	1	91-179			
IN.,S.	1	91-1665	NJ.	2	91-5420						
IN.,S.	1	91-1666	NJ.	2	91-5421	TEXAS EASTERN					
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IN.,S.	1	91-1668	NJ.	2	91-5423	TX.,E.	1	86-297			
IN.,S.	1	91-1669	NJ.	2	92-532	TX.,E.	1	89-181			
IN.,S.	1	91-1670	<del>NJ.</del>	<del>2</del>	<del>92-731</del> <i>Stricken 4-16-92</i>						
IN.,S.	1	91-1671	NJ.	2	92-836	TEXAS WESTERN					
IN.,S.	1	91-1672	NJ.	2	92-837	TX.,W.	6	87-60			
IN.,S.	1	91-1673	NJ.	3	92-1155						
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IN.,S.	1	91-1684	OK.,N.	4	92-95						
IN.,S.	1	91-1685									
IN.,S.	1	91-1686	OREGON								
IN.,S.	1	91-1687	OR.	3	92-159						
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IN.,S.	1	91-1690	RI.	1	92-97						
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NC.,E.	5	92-178	SC.	2	92-647						

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U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

- DOCKET NO. 875

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

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(SEE ATTACHED SCHEDULE CTO-15)

92-C-91-E ✓

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FOR THE PANEL:

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Patricia D. Howard  
Clerk of the Panel

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APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

TRUE COPY CERTIFIED TO FROM THE RECORD  
4/12/92  
3024  
DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17 1992

ATTEST *Patricia D. Howard*  
FOR THE JUDICIAL PANEL OF  
MULTIDISTRICT LITIGATION

DISTRICT DIV CIVIL ACTION#

IN.,S. 1 91-1650

IN.,S. 1 91-1651

IN.,S. 1 91-1652

IN.,S. 1 91-1653

IN.,S. 1 91-1654

IN.,S. 1 91-1655

IN.,S. 1 91-1656

IN.,S. 1 91-1657

IN.,S. 1 91-1658

IN.,S. 1 91-1659

IN.,S. 1 91-1660

IN.,S. 1 91-1661

IN.,S. 1 91-1662

IN.,S. 1 91-1663

IN.,S. 1 91-1664

IN.,S. 1 91-1665

IN.,S. 1 91-1666

IN.,S. 1 91-1667

IN.,S. 1 91-1668

IN.,S. 1 91-1669

IN.,S. 1 91-1670

IN.,S. 1 91-1671

IN.,S. 1 91-1672

IN.,S. 1 91-1673

IN.,S. 1 91-1674

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IN.,S. 1 91-1686

IN.,S. 1 91-1687

IN.,S. 1 91-1688

IN.,S. 1 91-1689

IN.,S. 1 91-1690

IN.,S. 1 91-1691

IN.,S. 1 91-1692

IN.,S. 1 91-1693

IN.,S. 1 91-1694

IN.,S. 1 91-1695

IN.,S. 3 91-150

IN.,S. 3 91-172

KANSAS

KS. 6 92-1084

KS. 6 92-1085

MISSOURI WESTERN

MO.,W. 4 92-210

NORTH CAROLINA EASTERN

NC.,E. 2 91-66

NC.,E. 4 91-148

NC.,E. 4 92-6

NC.,E. 4 92-9

NC.,E. 4 92-15

NC.,E. 5 92-178

NC.,E. 7 91-95

NC.,E. 7 91-110

NC.,E. 7 91-120

NORTH CAROLINA WESTERN

NC.,W. 3 92-14

NC.,W. 3 92-36

NC.,W. 5 92-15

NEW HAMPSHIRE

NH. 1 92-139

NEW JERSEY

NJ. 1 92-1262

NJ. 2 92-1763

NJ. 2 91-5420

NJ. 2 91-5421

NJ. 2 91-5422

NJ. 2 91-5423

NJ. 2 92-532

NJ. 2 92-731

NJ. 2 92-836

NJ. 2 92-837

NJ. 3 92-1155

NJ. 3 92-1199

NJ. 3 92-1200

OKLAHOMA NORTHERN

OK.,N. 4 92-62

OK.,N. 4 92-90

OK.,N. 4 92-91

OK.,N. 4 92-92

OK.,N. 4 92-93

OK.,N. 4 92-94

OK.,N. 4 92-95

OREGON

OR. 3 92-159

RHODE ISLAND

RI. 1 92-97

SOUTH CAROLINA

SC. 1 91-1442

SC. 2 92-399

SC. 2 92-440

SC. 2 92-441

SC. 2 92-498

SC. 2 92-560

SC. 2 92-573

SC. 2 92-574

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SC. 2 92-600

SC. 2 92-601

SC. 2 92-602

SC. 2 92-603

SC. 2 92-631

SC. 2 92-647

SC. 2 92-654

SC. 2 92-679

SC. 2 92-680

SC. 2 92-697

SC. 2 92-714

SC. 2 92-715

SC. 2 92-716

SC. 2 92-717

TENNESSEE EASTERN

TN.,E. 1 91-174

TN.,E. 1 91-175

TN.,E. 1 91-176

TN.,E. 1 91-178

TN.,E. 1 91-179

TEXAS EASTERN

TX.,E. 1 78-312

TX.,E. 1 86-297

TX.,E. 1 89-181

TEXAS WESTERN

TX.,W. 6 87-60

WASHINGTON WESTERN

WA.,W. 3 92-5035

RECEIVED

APR 22 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

- DOCKET NO. 875

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

(SEE ATTACHED SCHEDULE CTO-15)

92-C-92-B ✓

**CONDITIONAL TRANSFER ORDER**

On July 29, 1991, the Panel transferred 27,696 civil actions to the United States District Court for the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 4,500 additional actions have been transferred to the Eastern District of Pennsylvania. With the consent of that court, all such actions have been assigned to the Honorable Charles R. Weiner.

It appears that the actions listed on the attached schedule involve questions of fact which are common to the actions previously transferred to the Eastern District of Pennsylvania and assigned to Judge Weiner.

Pursuant to Rule 12 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 120 F.R.D. 251, 258, the actions on the attached schedule are hereby transferred under 28 U.S.C. §1407 to the Eastern District of Pennsylvania for the reasons stated in the opinion and order of July 29, 1991, (771 F.Supp. 415), as corrected on October 1, 1991, October 18, 1991, November 22, 1991, December 9, 1991, January 16, 1992, and March 5, 1992, with the consent of that court, assigned to the Honorable Charles R. Weiner.

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FOR THE PANEL:

*Patricia D. Howard*  
Patricia D. Howard  
Clerk of the Panel

INASMUCH AS NO OBJECTION IS FILED  
AT THIS TIME THE STAY IS LIFTED AND  
THIS ORDER BECOMES EFFECTIVE

APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

TRUE COPY CERTIFIED TO FROM THE RECORD  
4/30/92  
DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17

ATTEST *Patricia D. Howard*  
FOR THE JUDICIAL PANEL OF  
MULTIDISTRICT LITIGATION

DISTRICT

DIV

CIVIL ACTION#

IN.,S.

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91-1650

IN.,S.

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91-1651

IN.,S.

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91-1652

IN.,S.

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91-1653

IN.,S.

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IN.,S.

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IN.,S.

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IN.,S.

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IN.,S.

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IN.,S.

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IN.,S.

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IN.,S.

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IN.,S.

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91-1695

IN.,S.

3

91-150

IN.,S.

3

91-172

KANSAS

KS.

6

92-1084

KS.

6

92-1085

MISSOURI WESTERN

MO.,W.

4

92-210

NORTH CAROLINA EASTERN

NC.,E.

2

91-66

NC.,E.

4

91-148

NC.,E.

4

92-6

NC.,E.

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92-9

NC.,E.

4

92-15

NC.,E.

5

92-178

NC.,E.

7

91-95

NC.,E.

7

91-110

NC.,E.

7

91-120

NORTH CAROLINA WESTERN

NC.,W.

3

92-14

NC.,W.

3

92-36

NC.,W.

5

92-15

NEW HAMPSHIRE

NH.

1

92-139

NEW JERSEY

NJ.

1

92-1262

NJ.

2

91-5420

NJ.

2

91-5421

NJ.

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NJ.

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NJ.

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NJ.

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NJ.

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92-1200

OKLAHOMA NORTHERN

OK.,N.

4

92-62

OK.,N.

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OK.,N.

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OK.,N.

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OK.,N.

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OK.,N.

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OK.,N.

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92-95

OREGON

OR.

3

92-159

RHODE ISLAND

RI.

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92-97

SOUTH CAROLINA

SC.

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91-1442

SC.

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92-399

SC.

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SC.

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SC.

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SC.

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92-717

TENNESSEE EASTERN

TN.,E.

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91-174

TN.,E.

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TN.,E.

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91-176

TN.,E.

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91-178

TN.,E.

1

91-179

TEXAS EASTERN

TX.,E.

1

78-312

TX.,E.

1

86-297

TX.,E.

1

89-181

TEXAS WESTERN

TX.,W.

6

87-60

WASHINGTON WESTERN

WA.,W.

3

92-5035



RECEIVED

APR 22 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

- DOCKET NO. 875

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

(SEE ATTACHED SCHEDULE CTO-15)

92-C-93-13 ✓

**CONDITIONAL TRANSFER ORDER**

On July 29, 1991, the Panel transferred 27,696 civil actions to the United States District Court for the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 4,500 additional actions have been transferred to the Eastern District of Pennsylvania. With the consent of that court, all such actions have been assigned to the Honorable Charles R. Weiner.

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FOR THE PANEL:

*Patricia D. Howard*  
Patricia D. Howard  
Clerk of the Panel

INASMUCH AS NO OBJECTION IS FILED  
AT THIS TIME THE STAY IS LIFTED AND  
THIS ORDER BECOMES EFFECTIVE

APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

TRUE COPY CERTIFIED TO FROM THE RECORD  
4/15/92  
DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17 1992

ATTEST *Deborah A. Davis*  
FOR THE JUDICIAL PANEL OF  
MULTIDISTRICT LITIGATION

DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#
IN.,S.	1	91-1650	NC.,E.	7	91-95	SC.	2	92-654			
IN.,S.	1	91-1651	NC.,E.	7	91-110	SC.	2	92-679			
IN.,S.	1	91-1652	NC.,E.	7	91-120	SC.	2	92-680			
IN.,S.	1	91-1653				SC.	2	92-697			
IN.,S.	1	91-1654	NORTH CAROLINA WESTERN			SC.	2	92-714			
IN.,S.	1	91-1655	NC.,W.	3	92-14	SC.	2	92-715			
IN.,S.	1	91-1656	NC.,W.	3	92-36	SC.	2	92-716			
IN.,S.	1	91-1657	NC.,W.	5	92-15	SC.	2	92-717			
IN.,S.	1	91-1658									
IN.,S.	1	91-1659	NEW HAMPSHIRE			TENNESSEE EASTERN					
IN.,S.	1	91-1660	NH.	1	92-139	TN.,E.	1	91-174			
IN.,S.	1	91-1661				TN.,E.	1	91-175			
IN.,S.	1	91-1662	NEW JERSEY			TN.,E.	1	91-176			
IN.,S.	1	91-1663	NJ.	1	92-1262	TN.,E.	1	91-178			
IN.,S.	1	91-1664	<del>NJ.</del>	<del>2</del>	<del>92-1763</del> <i>opp 4-11-69</i>	TN.,E.	1	91-179			
IN.,S.	1	91-1665	NJ.	2	91-5420						
IN.,S.	1	91-1666	NJ.	2	91-5421	TEXAS EASTERN					
IN.,S.	1	91-1667	NJ.	2	91-5422	TX.,E.	1	78-312			
IN.,S.	1	91-1668	NJ.	2	91-5423	TX.,E.	1	86-297			
IN.,S.	1	91-1669	NJ.	2	92-532	TX.,E.	1	89-181			
IN.,S.	1	91-1670	<del>NJ.</del>	<del>2</del>	<del>92-731</del> <i>Shelton 4-16-92</i>						
IN.,S.	1	91-1671	NJ.	2	92-836	TEXAS WESTERN					
IN.,S.	1	91-1672	NJ.	2	92-837	TX.,W.	6	87-60			
IN.,S.	1	91-1673	NJ.	3	92-1155						
IN.,S.	1	91-1674	NJ.	3	92-1199	WASHINGTON WESTERN					
IN.,S.	1	91-1675	NJ.	3	92-1200	WA.,W.	3	92-5035			
IN.,S.	1	91-1676									
IN.,S.	1	91-1677	OKLAHOMA NORTHERN								
IN.,S.	1	91-1678	OK.,N.	4	92-62						
IN.,S.	1	91-1679	OK.,N.	4	92-90						
IN.,S.	1	91-1680	OK.,N.	4	92-91						
IN.,S.	1	91-1681	OK.,N.	4	92-92						
IN.,S.	1	91-1682	OK.,N.	4	92-93						
IN.,S.	1	91-1683	OK.,N.	4	92-94						
IN.,S.	1	91-1684	OK.,N.	4	92-95						
IN.,S.	1	91-1685									
IN.,S.	1	91-1686	OREGON								
IN.,S.	1	91-1687	OR.	3	92-159						
IN.,S.	1	91-1688									
IN.,S.	1	91-1689	RHODE ISLAND								
IN.,S.	1	91-1690	RI.	1	92-97						
IN.,S.	1	91-1691									
IN.,S.	1	91-1692	SOUTH CAROLINA								
IN.,S.	1	91-1693	SC.	1	91-1442						
IN.,S.	1	91-1694	SC.	2	92-399						
IN.,S.	1	91-1695	SC.	2	92-440						
IN.,S.	3	91-150 <i>opp 4/14/92</i>	SC.	2	92-441						
IN.,S.	3	91-172 <i>opp 4/14/92</i>	SC.	2	92-498						
			SC.	2	92-560						
			SC.	2	92-573						
KANSAS			SC.	2	92-574						
KS.	6	92-1084	SC.	2	92-577						
KS.	6	92-1085	SC.	2	92-578						
			SC.	2	92-579						
MISSOURI WESTERN			SC.	2	92-587						
MO.,W.	4	92-210	SC.	2	92-588						
			SC.	2	92-589						
NORTH CAROLINA EASTERN			SC.	2	92-600						
NC.,E.	2	91-66	SC.	2	92-601						
NC.,E.	4	91-148	SC.	2	92-602						
NC.,E.	4	92-6	SC.	2	92-603						
NC.,E.	4	92-9	SC.	2	92-631						
NC.,E.	4	92-15	SC.	2	92-647						
NC.,E.	5	92-178									

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APR 22 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

- DOCKET NO. 875

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

(SEE ATTACHED SCHEDULE CTO-15)

92-C-94-E ✓

**CONDITIONAL TRANSFER ORDER**

On July 29, 1991, the Panel transferred 27,696 civil actions to the United States District Court for the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 4,500 additional actions have been transferred to the Eastern District of Pennsylvania. With the consent of that court, all such actions have been assigned to the Honorable Charles R. Weiner.

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FOR THE PANEL:

*Patricia D. Howard*  
Patricia D. Howard  
Clerk of the Panel

INASMUCH AS NO OBJECTION IS PLACED  
AT THIS TIME THE STAY IS LIFTED AND  
THIS ORDER BECOMES EFFECTIVE

APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

TRUE COPY CERTIFIED TO FROM THE RECORD  
4/15/92  
3224/f  
DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17 1992

ATTEST *Deborah A. Davis*  
FOR THE JUDICIAL PANEL OF  
MULTIDISTRICT LITIGATION

DISTRICT DIV CIVIL ACTION#

IN.,S. 1 91-1650

IN.,S. 1 91-1651

IN.,S. 1 91-1652

IN.,S. 1 91-1653

IN.,S. 1 91-1654

IN.,S. 1 91-1655

IN.,S. 1 91-1656

IN.,S. 1 91-1657

IN.,S. 1 91-1658

IN.,S. 1 91-1659

IN.,S. 1 91-1660

IN.,S. 1 91-1661

IN.,S. 1 91-1662

IN.,S. 1 91-1663

IN.,S. 1 91-1664

IN.,S. 1 91-1665

IN.,S. 1 91-1666

IN.,S. 1 91-1667

IN.,S. 1 91-1668

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IN.,S. 1 91-1691

IN.,S. 1 91-1692

IN.,S. 1 91-1693

IN.,S. 1 91-1694

IN.,S. 1 91-1695

IN.,S. 3 91-170

IN.,S. 3 91-172

KANSAS

KS. 6 92-1084

KS. 6 92-1085

MISSOURI WESTERN

MO.,W. 4 92-210

NORTH CAROLINA EASTERN

NC.,E. 2 91-66

NC.,E. 4 91-148

NC.,E. 4 92-6

NC.,E. 4 92-9

NC.,E. 4 92-15

NC.,E. 5 92-178

DISTRICT DIV CIVIL ACTION#

NC.,E. 7 91-95

NC.,E. 7 91-110

NC.,E. 7 91-120

NORTH CAROLINA WESTERN

NC.,W. 3 92-14

NC.,W. 3 92-36

NC.,W. 5 92-15

NEW HAMPSHIRE

NH. 1 92-139

NEW JERSEY

NJ. 1 92-1262

NJ. 2 92-1763

NJ. 2 91-5420

NJ. 2 91-5421

NJ. 2 91-5422

NJ. 2 91-5423

NJ. 2 92-532

NJ. 2 92-731

NJ. 2 92-836

NJ. 2 92-837

NJ. 3 92-1155

NJ. 3 92-1199

NJ. 3 92-1200

OKLAHOMA NORTHERN

OK.,N. 4 92-62

OK.,N. 4 92-90

OK.,N. 4 92-91

OK.,N. 4 92-92

OK.,N. 4 92-93

OK.,N. 4 92-94

OK.,N. 4 92-95

OREGON

OR. 3 92-159

RHODE ISLAND

RI. 1 92-97

SOUTH CAROLINA

SC. 1 91-1442

SC. 2 92-399

SC. 2 92-440

SC. 2 92-441

SC. 2 92-498

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SC. 2 92-573

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SC. 2 92-631

SC. 2 92-647

DISTRICT DIV CIVIL ACTION#

SC. 2 92-654

SC. 2 92-679

SC. 2 92-680

SC. 2 92-697

SC. 2 92-714

SC. 2 92-715

SC. 2 92-716

SC. 2 92-717

TENNESSEE EASTERN

TN.,E. 1 91-174

TN.,E. 1 91-175

TN.,E. 1 91-176

TN.,E. 1 91-178

TN.,E. 1 91-179

TEXAS EASTERN

TX.,E. 1 78-312

TX.,E. 1 86-297

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TX.,W. 6 87-60

WASHINGTON WESTERN

WA.,W. 3 92-5035

DISTRICT DIV CIVIL ACTION#

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JUDICIAL PANEL ON  
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April 1, 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)**

(SEE ATTACHED SCHEDULE CTO-15)

**CONDITIONAL TRANSFER ORDER**

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*Patricia D. Howard*  
Patricia D. Howard  
Clerk of the Panel

INASMUCH AS NO OBJECTION IS FILED  
AT THIS TIME THE STAY IS LIFTED AND  
THIS ORDER BECOMES EFFECTIVE

APR 17 1992

PATRICIA D. HOWARD  
CLERK OF THE PANEL

TRUE COPY CERTIFIED TO FROM THE RECORD  
4/30/92  
DEPUTY CLERK, UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

A CERTIFIED TRUE COPY

APR 17

ATTEST *Deborah A. Davis*  
FOR THE JUDICIAL PANEL OF  
MULTIDISTRICT LITIGATION

DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#
IN.,S.	1	91-1650	NC.,E.	7	91-95	SC.	2	92-654			
IN.,S.	1	91-1651	NC.,E.	7	91-110	SC.	2	92-679			
IN.,S.	1	91-1652	NC.,E.	7	91-120	SC.	2	92-680			
IN.,S.	1	91-1653				SC.	2	92-697			
IN.,S.	1	91-1654	NORTH CAROLINA WESTERN			SC.	2	92-714			
IN.,S.	1	91-1655	NC.,W.	3	92-14	SC.	2	92-715			
IN.,S.	1	91-1656	NC.,W.	3	92-36	SC.	2	92-716			
IN.,S.	1	91-1657	NC.,W.	5	92-15	SC.	2	92-717			
IN.,S.	1	91-1658									
IN.,S.	1	91-1659	NEW HAMPSHIRE			TENNESSEE EASTERN					
IN.,S.	1	91-1660	NH.	1	92-139	TN.,E.	1	91-174			
IN.,S.	1	91-1661				TN.,E.	1	91-175			
IN.,S.	1	91-1662	NEW JERSEY			TN.,E.	1	91-176			
IN.,S.	1	91-1663	NJ.	1	92-1262	TN.,E.	1	91-178			
IN.,S.	1	91-1664	<del>NJ.</del>	<del>2</del>	<del>92-1763</del> <i>opp 4/16/92</i>	TN.,E.	1	91-179			
IN.,S.	1	91-1665	NJ.	2	91-5420						
IN.,S.	1	91-1666	NJ.	2	91-5421	TEXAS EASTERN					
IN.,S.	1	91-1667	NJ.	2	91-5422	TX.,E.	1	78-312			
IN.,S.	1	91-1668	NJ.	2	91-5423	TX.,E.	1	86-297			
IN.,S.	1	91-1669	NJ.	2	92-532	TX.,E.	1	89-181			
IN.,S.	1	91-1670	<del>NJ.</del>	<del>2</del>	<del>92-751</del> <i>Sheldon 4-16-92</i>						
IN.,S.	1	91-1671	NJ.	2	92-836	TEXAS WESTERN					
IN.,S.	1	91-1672	NJ.	2	92-837	TX.,W.	6	87-60			
IN.,S.	1	91-1673	NJ.	3	92-1155						
IN.,S.	1	91-1674	NJ.	3	92-1199	WASHINGTON WESTERN					
IN.,S.	1	91-1675	NJ.	3	92-1200	WA.,W.	3	92-5035			
IN.,S.	1	91-1676									
IN.,S.	1	91-1677	OKLAHOMA NORTHERN								
IN.,S.	1	91-1678	OK.,N.	4	92-62						
IN.,S.	1	91-1679	OK.,N.	4	92-90						
IN.,S.	1	91-1680	OK.,N.	4	92-91						
IN.,S.	1	91-1681	OK.,N.	4	92-92						
IN.,S.	1	91-1682	OK.,N.	4	92-93						
IN.,S.	1	91-1683	OK.,N.	4	92-94						
IN.,S.	1	91-1684	OK.,N.	4	92-95						
IN.,S.	1	91-1685									
IN.,S.	1	91-1686	OREGON								
IN.,S.	1	91-1687	OR.	3	92-159						
IN.,S.	1	91-1688									
IN.,S.	1	91-1689	RHODE ISLAND								
IN.,S.	1	91-1690	RI.	1	92-97						
IN.,S.	1	91-1691									
IN.,S.	1	91-1692	SOUTH CAROLINA								
IN.,S.	1	91-1693	SC.	1	91-1442						
IN.,S.	1	91-1694	SC.	2	92-399						
IN.,S.	1	91-1695	SC.	2	92-440						
<del>IN.,S.</del>	<del>3</del>	<del>91-150</del> <i>opp 4/14/92</i>	SC.	2	92-441						
<del>IN.,S.</del>	<del>3</del>	<del>91-172</del> <i>opp 4/14/92</i>	SC.	2	92-498						
			SC.	2	92-560						
			SC.	2	92-573						
			SC.	2	92-574						
			SC.	2	92-577						
			SC.	2	92-578						
			SC.	2	92-579						
			SC.	2	92-587						
			SC.	2	92-588						
			SC.	2	92-589						
			SC.	2	92-600						
			SC.	2	92-601						
			SC.	2	92-602						
			SC.	2	92-603						
			SC.	2	92-631						
			SC.	2	92-647						
KANSAS											
KS.	6	92-1084									
KS.	6	92-1085									
MISSOURI WESTERN											
MO.,W.	4	92-210									
NORTH CAROLINA EASTERN											
NC.,E.	2	91-66									
NC.,E.	4	91-148									
NC.,E.	4	92-6									
NC.,E.	4	92-9									
NC.,E.	4	92-15									
NC.,E.	5	92-178									

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**APR 22 1992**

SABRE INTERNATIONAL, INC.,  
a Washington corporation,  
  
Plaintiff,  
  
vs.  
  
HUNT, INC.,  
a Florida corporation,  
  
Defendant.

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-560-*de*

AGREED ORDER OF DISMISSAL, WITH PREJUDICE,  
OF PROCEEDINGS

NOW, on this 20 <sup>April</sup> day of March, 1992, the above styled and numbered cause comes on before this Court upon the Joint Stipulation and Application of the parties for entry of an Order, dismissing these proceedings, with prejudice. Whereupon, the Court, having reviewed said Stipulation and Application, finds and concludes that the parties have achieved a settlement and compromise of the controversies which were the subject matter of these proceedings and agreed to request dismissal, with prejudice, of these proceedings, based upon such settlement and compromise.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled and numbered proceedings should be, and are hereby dismissed. This dismissal is with prejudice to the reinstitution of these or any other proceedings based upon the acts, facts, transactions and circumstances which formed, could have formed or could have been asserted to have formed the basis of any claims for relief, whether asserted herein, required to be asserted herein or

15

permitted to be asserted herein, pursuant to applicable and ruling statutory and decisional law, including, but not limited to: the Federal Rules of Civil Procedure.

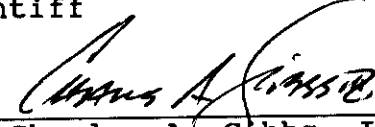
Each party hereto shall bear its own costs, expenses and attorney's fees.

Entered, executed and effective this 21<sup>st</sup> day of April, 1992 at Tulsa, OK.

  
THE HONORABLE JAMES O. ELLISON  
JUDGE, U.S.D.C., N.D.OK

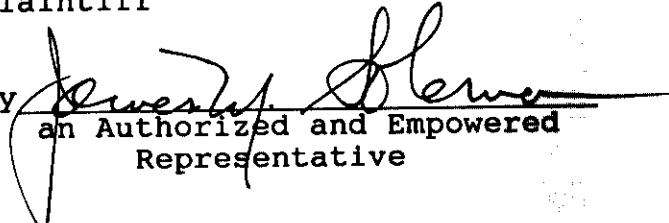
Approved as to form:

Sabre International, Inc.,  
Plaintiff

By   
Charles A. Gibbs, III,  
as its Counsel

Approved for entry:

Sabre International, Inc.,  
Plaintiff

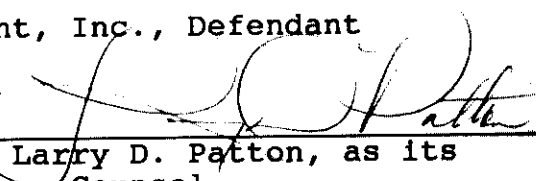
By   
an Authorized and Empowered  
Representative



Approved as to form:

Hunt, Inc., Defendant

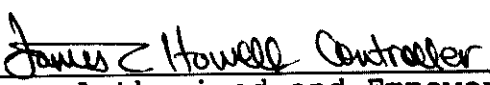
By

  
Larry D. Patton, as its  
Counsel

Approved for entry:

Hunt, Inc., Defendant

By

  
an Authorized and Empowered  
Representative

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOYCE L. JACKSON,  
SSN 445-46-7726,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,  
Secretary of Health  
and Human Services,

Defendant.

Case No. 90-C-582-B

FILED  
AND  
Richard M. Lavender, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes on for consideration of the objection of the Plaintiff, Joyce L. Jackson, to the Report and Recommendation of the United States Magistrate Judge affirming the Administrative Law Judge's denial of disability insurance benefits.

Plaintiff filed the instant action pursuant to 42 U.S.C. § 405 (g), seeking a review of the decision of the Secretary of Health and Human Services. The matter was referred to the Magistrate Judge who entered his Report and Recommendation on September 16, 1991, finding that the Secretary's decision should be affirmed.

The only issue before the Magistrate Judge was whether there was substantial evidence in the record to support the Secretary's decision that Plaintiff is not disabled within the meaning of the Social Security Act. "Disability" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." 42 U.S.C.A.

§423 (d)(1)(A).

Further, the Secretary's findings shall stand if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The Secretary has established a five-step process for evaluating a disability claim, as set forth in Reyes v. Bowen, 845 F.2d 242 (10th Cir 1988) at 243:

- (1) A person who is working is not disabled. 20 C.F.R. § 416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. § 416.920(c).
- (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. § 416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. § 416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. § 416.920(f).

In the present case, the Administrative Law Judge found in his decision of August 1, 1989, that although the Plaintiff had not been employed since April, 1987, when she suffered a broken ankle from a fall from a second story balcony, Plaintiff did not satisfy the fifth section of this test. The ALJ further found that in her present medical condition Plaintiff would be capable of performing

other work in the national economy, e.g. a sedentary-type job such as a receptionist or a word processing operator, and that she was therefore not disabled within the meaning of the Act.

Plaintiff appealed the ALJ's decision, arguing that she satisfied the third step of the determinative process in that her medical expert testimony (Dr. Thomas A. Marberry, M.D.) established that her impairment met or equaled one of the impairments listed in the "Listing of Impairments". The ALJ specifically rejected such argument in his Findings #5, as follows:

5. The claimant does not have an impairment or a combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.

The issue before this Court, as was the issue before the Magistrate Judge, is whether there was substantial evidence in the record upon which the ALJ predicated such finding.

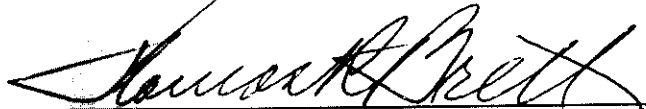
The Court notes the Social Security Appeals Council remanded the ALJ's earlier decision dated September 21, 1988, specifically for the purpose of allowing the ALJ to contact Dr. Marberry for clarification of his opinion that the claimant's impairment is equivalent to section 1.03 of the Listing of Impairments and obtain a functional assessment of the claimant's ability to perform work related activities. Dr. Marberry's additional "residual functional capacity evaluation", objected to by Plaintiff's counsel because of the doctor's comments on vocational factors, he not being qualified as a vocational expert, contained the following comments:

"As I have recommended before, I do not think it in the patient's best interest to be standing or prolonged weight bearing because of her severe heel injury.

Prolonged continuous sitting also might result in swelling, so some combination of sedentary but with some mobilization would be safe and satisfactory for this lady."

The Court has reviewed the record before the Administrative Law Judge and concludes that it contains substantial evidence upon which the Administrative Law Judge's decision was based. The Court further concludes the Magistrate Judge's Report and Recommendation, recommending that the decision of the Secretary denying disability should be affirmed, is herein adopted and affirmed. The Court affirms the decision of the Secretary.

IT IS SO ORDERED this 22<sup>nd</sup> day of April, 1992.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 22 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

LAVERNE GARDNER,

Plaintiff,

vs.

No. 91-C-868-E

SOUTHWEST AIRLINES CO.,

Defendant.

**ORDER**

The Court has for consideration the Report and Recommendation of the Magistrate filed on February 14, 1992. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Plaintiff's Complaint be dismissed without prejudice to its refiling.

ORDERED this 21st day of April 1992.

  
CHIEF JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAMES JACKSON,

Plaintiff,

v.

STATE OF OKLAHOMA, et al,

Defendants.

91-C-686-C

FILED  
APR 1 1992  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
CLERK

ORDER

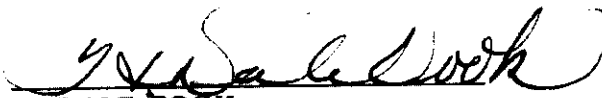
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed March 31, 1992 in which the Magistrate Judge recommended that the case be dismissed without prejudice.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that this case is dismissed without prejudice.

Dated this 22<sup>nd</sup> day of April, 1992.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 21 1992  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STEVE LENNOX,

Plaintiff,

v.

ROBERT A. RAVITZ, et al,

Defendants.

91-C-973-B /

ORDER

This Order pertains to plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Docket #2)<sup>1</sup>, defendants' Motion to Dismiss (#3), and plaintiff's Traverse(#5). Plaintiff complains that he has been deprived of due process, equal protection, and effective assistance of counsel because of the delay in the filing of his appeal brief in the Oklahoma Court of Criminal Appeals.

Plaintiff was convicted of Robbery by Force and Escape from a Penitentiary and sentenced on October 25, 1990, to twenty years on counts 1 and 2 and ten years on count 3. Due to an administrative error, the Public Defender of Oklahoma County was not appointed to represent plaintiff on appeal and the necessary appeal papers were not filed within the required time. Upon learning of this mistake, the Public Defender of Oklahoma County filed a Post-Conviction Application for an Appeal out-of-time, which was granted by the Oklahoma Court of Criminal Appeals on January 15, 1991. The court directed that the appeal be perfected within six months, as required by the procedural rules of the

<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

9074-22



Oklahoma Court of Criminal Appeals. Rule 1.4(B) of the Oklahoma Court of Criminal Appeals.

On July 12, 1991, a Petition in Error, the original record, and transcript were filed with the Oklahoma Court of Criminal Appeals. Two extensions of time to file the appeal brief were filed and subsequently granted. The appeal brief was filed with the court on January 17, 1992, four months after the date provided by the rules for filing the appeal brief. Rules 2.1(C), 3.2, and 3.4(B) of the Oklahoma Court of Criminal Appeals. The appeal is pending.

To state a cause of action under § 1983, plaintiff must show that the conduct complained of was committed by a person acting under color of state law and that this conduct deprived plaintiff of some right, privilege, or immunity secured by the Constitution or laws of the United States. *Gunkel v. City of Emporia, Kan.*, 835 F.2d 1302, 1303 (10th Cir. 1987).

In *DeLancy v. Caldwell*, 741 F.2d 1246, 1247-48 (10th Cir. 1984), the court found that an excessive delay in furnishing a transcript of a proceeding for an appeal can amount to a deprivation of due process. It noted that the Supreme Court had identified four factors that should be balanced on a case-by-case basis to determine whether a defendant has been denied his due process right to a speedy trial in *Barker v. Wingo*, 407 U.S. 514 (1972). Those factors are the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.* at 530. *Barker* involved a defendant who was not brought to trial for more than five years after his arrest.

The court in *DeLancy* concluded that the right to avoid unreasonable delay in the appellate process is similar to the right to a speedy trial, so a court must balance the four factors to determine whether plaintiff in the case at bar has been denied due process. *Id.* The *DeLancy* court found that a defendant has three interests in a timely appeal: "(1) prevention of oppressive incarceration pending appeal; (2) minimization of anxiety and concern of those convicted awaiting the outcome of their appeals; and (3) limitation of the possibility that a convicted person's grounds for appeal, and his or her defenses in case of reversal or retrial, might be impaired." *Id.* (citing *Rheuark v. Shaw*, 628 F.2d 297, 303 n.8 (5th Cir. 1980)).

The *DeLancy* court concluded that if a plaintiff in a § 1983 civil rights action can establish a delay in his appeal process, the trial court must balance the four factors of *Barker v. Wingo*, including the three interests that fall under the fourth factor, prejudice to the defendant, in a "difficult and sensitive balancing process" to determine if he has been deprived of due process by the delay. *Id.* at 1248. See also, *Simmons v. Reynolds*, 898 F.2d 865, 868 (2nd Cir. 1990) (court determined that a five-year delay in processing an appeal was a violation of the prisoner's due process rights).

There has been no inordinate, inexcusable delay in the filing of plaintiff's appeal brief. The appeal brief and record were submitted fifteen months after plaintiff was found guilty. While this was nine months more than the procedural rules provide, it was not excessive, since there was a delay in appointing the Public Defender to represent plaintiff on appeal. The delay does not impair plaintiff's grounds for appeal or defenses in case of reversal or retrial.

In *Polk County v. Dodson*, 454 U.S. 312, 325 (1981), the Supreme Court held that a public defender performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding is not "acting under color of state law" for purposes of suit under 42 U.S.C. § 1983. A public defender is held to the same standards of competence and integrity as a private lawyer and works under canons of professional responsibility that mandate his exercise of independent judgment on behalf of the client. *Id.* at 321.

The defendants, as Public Defenders of Oklahoma County, are acting in the traditional role of counsel for their client. They are not acting under color of state law, and the complaint against them should be dismissed.

Defendants' Motion to Dismiss (Docket #3) is granted and plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 is dismissed.

Dated this 21 day of Apr., 1992.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 21 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Alden Craft,

Plaintiff,

vs.

Case No. 90-C-627-E

Louis W. Sullivan, M.D.,  
Secretary of Health and  
Human Services,

Defendant.

**ORDER**

On February 27, 1992, the Secretary entered a decision reversing and remanding the Defendant's earlier administrative decision under Sections 216(i) and 223 of the Social Security Act, 42 U.S.C. Section 416(i) and 423, for payment of benefits to Plaintiff. No appeal was taken from this decision and the same is now final.

Plaintiff's counsel has expended 47.75 hours in representing the Plaintiff in Federal Court and before the Social Security Administration subsequent to an Order of Remand by this Court.

The parties have stipulated that an award in the amount of \$4775.00 (47.75 hours at \$100.00 per hour) for attorney fees and \$147.60 for expenses is appropriate, representing a total award under the EAJA of \$4922.60.

WHEREFORE, IT IS ORDERED that Plaintiff's counsel be awarded attorney fees and expenses under the Equal Access To Justice Act in the amount of \$4922.60 (47.75 hours at

\$100.00 per hours plus expenses of \$147.60).

Counsel for Plaintiff has filed for attorney fees under 42 U.S.C. Section 406, and under Lopez vs Sullivan, 882 F.2d 1533 (10th Cir., 1989) and Weakley vs Bowen, 803 F.2d 575 (10th Cir., 1986), counsel shall refund the smaller amount to the Plaintiff.

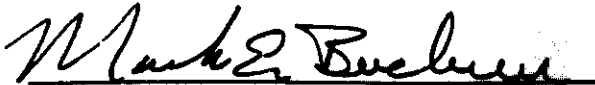
IT IS SO ORDERED THIS 20<sup>th</sup> day of April, 1992.

S/ JAMES O. GILSON

United States Judge



Peter Bernhardt, OBA# 741  
Assistant U.S. Attorney  
3600 U.S. Courthouse  
333 West Fourth Street  
Tulsa, Oklahoma 74102  
(918) 581-7463



Mark E. Buchner, OBA #1279  
3726 South Peoria  
Suite 26  
Tulsa, Oklahoma 74105  
(918) 744-5006

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
APR 21 1992

KIMBERLYN RAE KENDRICK,

Plaintiff,

vs.

Case No.: 87-C-844 B

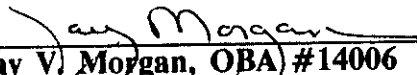
HICKS COMMUNICATIONS  
PARTNERS, a Delaware Limited  
Partnership, d/b/a KAYI-FM 107,  
a Hicks Communications, Inc., station,

Defendant.

**DISMISSAL WITH PREJUDICE**

COMES NOW the Plaintiff, Kimberlyn Kendrick, by and through her attorney of record, Michael C. Taylor & Associates, by Jay V. Morgan, and hereby dismisses the above-styled cause with prejudice, against Hicks Communications Partners, L.P., Defendant herein.

DATED this 21<sup>st</sup> day of April, 19 92.

  
Jay V. Morgan, OBA #14006  
1718 South Cheyenne  
Tulsa, Oklahoma 74119  
(918) 587-3366

ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I, Jay V. Morgan, hereby state and certify that a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed on this 21<sup>st</sup> day of April, 1992, with proper postage thereon fully prepaid, to:

R. Mark Solano  
4100 Bank of Oklahoma Tower  
Tulsa, Oklahoma 74172

  
\_\_\_\_\_  
Jay V. Morgan

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.

LAWRENCE E. TYNER; BONNIE B.  
TYNER; BAPTIST HEALTH CORP.  
d/b/a GROVE GENERAL HOSPITAL;  
COUNTY TREASURER, Delaware  
County, Oklahoma; and BOARD OF  
COUNTY COMMISSIONERS, Delaware  
County, Oklahoma,

Defendants.

**FILED**

APR 21 1992

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 91-C-434-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21 day  
of April, 1992. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Delaware County, Oklahoma, and  
Board of County Commissioners, Delaware County, Oklahoma, appear  
by Wes E. Combs, Assistant District Attorney, Delaware County,  
Oklahoma; the Defendant, Baptist Health Corp. d/b/a Grove General  
Hospital, appears by its attorney Gary D. Mallow; and the  
Defendants, Lawrence E. Tyner and Bonnie B. Tyner, appear not,  
but make default.

The Court being fully advised and having examined the  
court file finds that the Defendants, Lawrence E. Tyner and  
Bonnie B. Tyner, were served with Summons and Complaint on  
November 5, 1991; that the Defendant, Baptist Health Corp. d/b/a  
Grove General Hospital, acknowledged receipt of Summons and

NOTE: THIS ORDER IS TO BE MAILED  
BY MOVANT TO ALL COUNSEL AND  
PRO SE LITIGANTS IMMEDIATELY  
UPON RECEIPT.



Complaint on June 24, 1991; that Defendant, County Treasurer, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on June 24, 1991; and that Defendant, Board of County Commissioners, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on July 1, 1991.

It appears that the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, filed their Answer on June 26, 1991; that the Defendant, Baptist Health Corp. d/b/a Grove General Hospital, filed its Answer on June 27, 1991; and that the Defendants, Lawrence E. Tyner and Bonnie B. Tyner, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a mortgage securing said promissory note upon the following described real property located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

A piece, part, or parcel of land located in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 31, Township 24 North, Range 24 East, Delaware County, Oklahoma, more particularly described as follows, to-wit:

Beginning 24.6 feet East from the SW corner of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$ , thence East 83.4 feet to a point, thence North 521.8 feet to a point, thence West 83.4 feet to a point, thence South 521.8 feet to a point and place of beginning. All in Section 31, Township 24 North, Range 24 East, containing 1 acre, more or less.

The Court further finds that on June 20, 1973, the Defendants, Lawrence E. Tyner and Bonnie B. Tyner, executed and

delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$15,100.00, payable in monthly installments, with interest thereon at the rate of 7.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Lawrence E. Tyner and Bonnie B. Tyner, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated July 31, 1973, covering the above-described property. Said mortgage was recorded on July 31, 1973, in Book 318, Page 228, in the records of Delaware County, Oklahoma.

The Court further finds that Defendants, Lawrence E. Tyner and Bonnie B. Tyner, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Defendants, Lawrence E. Tyner and Bonnie B. Tyner, are indebted to the Plaintiff in the principal sum of \$10,180.54, plus accrued interest in the amount of \$292.29 as of January 9, 1991, plus interest accruing thereafter at the rate of 7.25 percent per annum or \$2.8221 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$108.00 (\$20.00 docket fees, \$80.00 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, Baptist Health Corp. d/b/a Grove General Hospital, has a lien on the

property which is the subject matter of this action in the amount of \$2,623.51, plus court costs in the amount of \$46.40, and attorney fees in the amount of \$150.00, and interest accruing at the daily rate of \$1.07 per day until paid, by virtue of a Journal Entry of Judgment, Case No. SC-87-176, and recorded in Book 523, Page 167 and in Book 527, Page 1 in the records of Delaware County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Delaware County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$16.17, plus penalty and interest. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Delaware County, Oklahoma, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Lawrence E. Tyner and Bonnie B. Tyner, in the principal sum of \$10,180.54, plus accrued interest in the amount of \$292.29 as of January 9, 1991, plus interest accruing thereafter at the rate of 7.25 percent per annum or \$2.8221 per day until judgment, plus interest thereafter at the current legal rate of 4.55 percent per annum until paid, plus the costs of this action in the amount of \$108.00 (\$20.00 docket fees, \$80.00 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of

Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, Baptist Health Corp. d/b/a Grove General Hospital, have and recover judgment in the amount of \$2,623.51, plus court costs in the amount of \$46.40, and attorney fees in the amount of \$150.00, and interest accruing at the daily rate of \$1.07 per day until paid, by virtue of a Journal Entry of Judgment, Case No. SC-87-176, and recorded in Book 523, Page 167 and in Book 527, Page 1 in the records of Delaware County, Oklahoma.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, County Treasurer, Delaware County, Oklahoma, have and recover judgment in the amount of \$16.17 for personal property taxes, plus penalty and interest.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, Board of County Commissioners, Delaware County, Oklahoma, has no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendants, Lawrence E. Tyner and Bonnie B. Tyner, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without

appraisement the real property involved herein and apply the proceeds of the sale as follows:

**First:**

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

**Second:**

In payment of the judgment rendered herein in favor of the Plaintiff;

**Third:**

In payment of the judgment rendered herein in favor of the Defendant, Baptist Health Corp. d/b/a Grove General Hospital;

**Fourth:**

In payment of Defendant, County Treasurer, Delaware County, Oklahoma, in the amount of \$16.17, plus penalty and interest, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any


right, title, interest or claim in or to the subject real property or any part thereof.

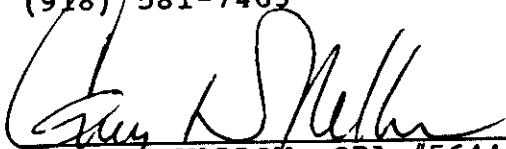
(Signed) H. Dale Cook


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
3600 U.S. Courthouse  
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GARY D. MALLOW, OBA #5644  
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Attorney for Defendant,  
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WES E. COMBS, OBA #13026  
Assistant District Attorney  
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Jay, OK 74346  
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Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Delaware County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 91-C-434-C

PP/css

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 21 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

RED WING PRODUCTS, INC., )

Plaintiff, )

vs. )

No. 91-C-369-E

THE AERO ELECTRIC CONNECTOR )  
COMPANY, INC., )

Defendant. )

CORRECTED ORDER


Comes now before the Court for consideration Defendant's motion to dismiss, or alternatively to transfer to Central District of California. After review of the instant record, the Court finds Defendant's motion to dismiss should be granted based on the Court's lack of subject matter jurisdiction.

Based on the record, the Court finds Plaintiff has not established a prima facie showing of "minimum contacts" to establish subject matter jurisdiction. Kennedy v. Freeman, 919 F.2d 126 (10th Cir. 1990) and Williams v. Bowman Livestock Equipment Company, 927 F.2d 1128 (10th Cir. 1991).

IT IS THEREFORE ORDERED that Defendant's motion to dismiss is granted.

IT IS FURTHER ORDERED that Court's Order entered April 14, 1992, is vacated for the reason that a scrivener's error appears in the last sentence of that Order, to-wit: "IT IS THEREFORE ORDERED that Plaintiff's motion to dismiss is granted."

ORDERED this 20<sup>th</sup> day of April, 1992.

  
\_\_\_\_\_  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAXINE ADRIANCE and  
THEODORE ADRIANCE,

Plaintiffs

vs.

MARC ABEL, TRIAD EYE MEDICAL  
CLINIC AND CATARACT INSTITUTE,  
INC., OSTEOPATHIC HOSPITAL  
FOUNDERS ASSOCIATION, TULSA  
REGIONAL MEDICAL CENTER, INC.,  
OKLAHOMA OSTEOPATHIC HOSPITAL,  
PETER SHRIVER, and Various  
Jane Does and John Does,

Defendants.

Case No. 91-C-209-B

FILED

APR 21 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes on for consideration of Defendants' Peter Shriver (Shriver) and Osteopathic Hospital Founders Association d/b/a Tulsa Regional Medical Center<sup>1</sup> (TRMC) Motion For Summary Judgment.

This is a medical malpractice action based upon diversity jurisdiction. Plaintiff Maxine Adriance (Adriance), the primary claimant herein,<sup>2</sup> alleges Defendants were negligent in failing to timely treat Adriance's post-operative intraocular infection

<sup>1</sup> Oklahoma Osteopathic Hospital, a named Defendant in the style of Plaintiffs' Complaint, is apparently one and the same as Osteopathic Hospital Founders Association d/b/a Tulsa Regional Medical Center, Inc..

<sup>2</sup> Plaintiff Theodore Adriance's claims are derivative, based upon alleged injury for loss of consortium.

600  
4-20

(endophthalmitis), an alleged known risk following her cataract surgery and lens implant in her left eye. The claimed negligence of the Defendants resulted in the alleged loss of reasonable opportunity to be cured of the infection which caused her to essentially lose the vision in her left eye, now 20/400.

The parties are in agreement as to many of the material facts giving rise to the instant action. On March 23, 1989, Dr. Marc Abel (Abel) at the Triad Medical Clinic (Triad) diagnosed Adriance as suffering from a cataract in her left eye and performed surgery one week later to remove the cataract and place an intraocular lens in the eye. On April 1, 1989, Adriance presented at TRMC's emergency room where she was examined by Dr. Shriver. Shriver was then a second-year ophthalmology resident physician participating in a graduate medical education program at the College of Osteopathic Medicine of Oklahoma State University.

After the examination Dr. Shriver established a differential diagnosis of diabetic retinopathy, hypertensive retinopathy, pars plante and early endophthalmitis and on that same date paged Dr. Abel to advise and consult with him concerning the care and treatment of Adriance. Adriance and her husband left the emergency room prior to Dr. Abel returning Dr. Shriver's page. Dr. Shriver instructed the Adriances, before their departure, to return to TRMC the following day, April 2, at 2:00 p.m.. On April 1, at approximately 4:00 p.m., Abel returned Shriver's page and spoke with him concerning Adriance's condition. According to the Pre-Trial Conference Order, "Dr. Abel felt fully advised of the

Plaintiff's condition and agreed with Dr. Shriver's treatment and instructions as Maxine Adriance's treating physician."

The crux of movants' summary judgment effort is that Plaintiffs' own expert witness (Dr. F.E. Conrad, M.D.) is uncritical of both Shriver and TRMC *ergo* there can be no *prima facie* case established against them. Crucial to this is movants' undisputed fact assertions that:

"11. Dr. Conrad has testified that he has no criticisms of Defendant, TRMC". and

"12. No witness has testified that Dr. Shriver or TRMC deviated from the standard of care."

The Court is of the view that movants' undisputed fact assertions 13. and 14. potentially undermine fact assertion 12., as follows:

"13. Dr. Conrad testified that in his opinion, the failure to obtain intraocular fluid from Maxine Adriance's eye was a deviation from the standard of care."

"14. Dr. Conrad testified that whoever was ultimately responsible for removing intraocular fluid deviated from the standard of care."

The Court concludes that it is yet factually undetermined whether Dr. Shriver and/or TRMC are among the parties "ultimately responsible for removing intraocular fluid" if such becomes the accepted standard of care of the treatment of Adriance's eye dilemma of April 1, 1989.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548,

91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). *cert den.* 480 U.S. 947 (1987). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585, 106 S.Ct. 1348, 89 L.Ed.2d 538, (1986).

The Court concludes there are material factual issues regarding the treatment of and the responsibility for Plaintiff's eye problems following her March 30, 1989 surgery. The Court further concludes these unresolved factual disputes preclude summary judgment.

The Court concludes Defendants' Shriver and TRMC Motion For Summary Judgment should be and the same is hereby DENIED as to the issues stated above.

The Court GRANTS Summary Judgment for Shriver on the issue of Shriver's potential liability being limited to \$100,000.00 under the Governmental Tort Claims Act, 51 O.S. §154(D). Plaintiffs

essentially concede same. Section 154(D) limits the total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliate institutions and the Oklahoma College of Osteopathic Medicine and Surgery to \$100,000.00.

TRMC's also moves to be so limited in potential liability because of its alleged suit status as being only under the doctrine of respondeat superior. Under Plaintiffs' allegations herein, TRMC is alleged to be negligent independent of the alleged negligence of Dr. Shriver and/or Dr. Abel and Triad. The Court concludes TRMC's Motion as to the GTCA cap of \$100,000 should be and the same is hereby DENIED.

IT IS SO ORDERED this 21<sup>st</sup> day of April, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JERRY LAYMON,

Plaintiff,

vs.

DEWEY JOHNSON, Sheriff of  
Rogers County, and THE CITY  
OF CLAREMORE, a municipal  
corporation,

Defendants.

No. 91-C-252-B

**FILED**

APR 21 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER

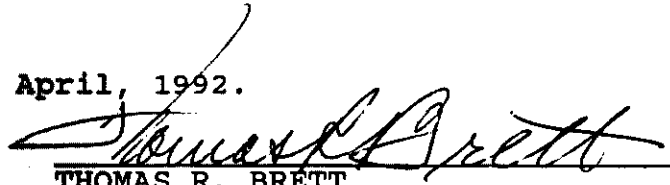
Before the Court for decision is the Plaintiff's Motion to Remand to the District Court in and for Rogers County, Oklahoma.<sup>1</sup> Plaintiff has filed an Amended Petition that asserts only a pendent state claim under the Oklahoma Governmental Tort Claims Act, Okla. Stat. tit. 51, § 151 *et seq.*

Both parties agree in their respective briefs that a legal question of first impression interpreting Okla. Stat. tit. 12, § 100 and Okla.Stat. tit. 51, § 157(B) is presented. Because only state issues remain, the Court concludes the state court is the more appropriate forum. Carnegie-Mellon University v. Cohill, 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988). Therefore, Plaintiff's Motion to Remand is hereby SUSTAINED.

---

<sup>1</sup>Various motions to dismiss and for summary judgment are likewise pending but are now moot before this Court in view of this ruling.

DATED this 21st day of April, 1992.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DR. RODRIGO RAMIREZ, and  
MS. BARBARA SNOW,

Plaintiffs,

v.

OKLAHOMA DEPARTMENT OF  
MENTAL HEALTH, and  
DANIEL CLUTE, and GERALD D.  
GOODNER, and WOODROW  
PENDERGRASS, and NANCEY  
PRIGMORE, and BOB LeFLORE,

Defendants.

Case No. 91-C-681-B

**FILED**

APR 21 1992

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**ORDER**

This order pertains to Plaintiffs' **Civil Rights** Complaint Pursuant to 42 U.S.C. §§ 1983, 1985, and 1988 and Oklahoma **common law** (Docket # 1)<sup>1</sup>, Defendants' Motion to Dismiss Plaintiffs' Complaint (Docket #6), **Plaintiffs'** Opposition to the Defendants' Motion to Dismiss Complaint (Docket #10), **and Plaintiffs'** Reply to Defendants' Response to Plaintiffs' Motion to Dismiss (Docket #15).

Plaintiffs allege that the Defendants, **who** are state officials or employees at Eastern State Hospital in Oklahoma, **wrongfully conspired** to violate plaintiffs' constitutional right of free speech "by causing the Defendant DMH [Department of Mental Health] to discharge Ramirez and discipline Snow for Plaintiffs' **reporting** of an incident involving the abuse and possibly lethal infection of a mental **patient by a co-employee.**" (Complaint, ¶ 19).

<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

606  
4-22



Defendants ask the court to **dismiss** the Complaint based on their defense of qualified immunity. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages **insofar** as their conduct does not violate clearly established statutory or constitutional **rights** of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Unlike other affirmative defenses, qualified immunity is not merely a **defense** to liability; it is also an immunity from suit. Qualified immunity protects a **defendant** from discovery, trial, and the other burdens of litigation. Pueblo Neighborhood Health Centers, Inc. v. Losavio, 847 F.2d 642, 645 (10th Cir. 1988). The question of **qualified immunity** is to be resolved at the earliest possible stage in litigation. Hunter v. Bryant, \_\_\_ U.S. \_\_\_, 112 S.Ct. 534, 536, 116 L.Ed.2d 589 (1991).

Following a plea of **qualified immunity**, the "court must allow the plaintiff . . . to come forward with any facts or **allegations**" showing that the defendant violated clearly established law. Pueblo Neighborhood Health Center, Inc., 647 F.2d at 646. The court must then determine whether the **complaint** includes "all of the factual allegations necessary to sustain a conclusion that **defendant** violated clearly established law." Powell v. Mikulecky, 891 F.2d 1454, 1457 (10th Cir. 1989). "[T]he plaintiff bears a heavy burden and must demonstrate a substantial **correspondence** between the conduct in question and prior law allegedly establishing that **the defendant's** actions were clearly prohibited." Laidley v. McClain, 914 F.2d 1386, 1394 (10th Cir. 1990).

In order to recover in a § 1983 **action**, a plaintiff must establish two essential elements: (1) that the conduct **complained of** was committed by a person acting under

color of state law; and (2) that this **conduct** deprived plaintiff of rights, privileges, or immunities secured by the Constitution or **the laws** of the United States. Gomez v. Toledo, 446 U.S. 635 (1980).

The conduct in this case satisfies the "under color of state law" requirement, as the defendants are state employees who **were acting** in their official capacity. The question then becomes whether plaintiff has **been deprived** of any right, privilege, or immunity secured by the Constitution or the **laws of the** United States. The complaint seeking damages under 42 U.S.C. § 1983 must **set forth** specifically what the official did to violate the plaintiff's federally protected rights.

In Hidahl v. Gilpin County DSS, 938 F.2d 1150, 1155 (10th Cir. 1991), the court found that there is a presumption in **favor of immunity** for public officials acting in their individual capacities. The court noted that "**even** an allegation of malice, . . . is insufficient to subject a defendant [in a § 1983 **action**] 'to the costs of trial or to the burdens of broadreaching discovery.'" Id. at 1154 (**citing** Harlow v. Fitzgerald, 457 U.S. at 817-18). A plaintiff in a 1983 case must do **more than** identify in the abstract a clearly established right and allege that the defendant has **violated** it. Powell, 891 F.2d at 1457 (10th Cir. 1989). See also, Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir. 1981) (in actions for alleged violation of constitutional rights, "**conclusory** allegations will not suffice."). Even where the Defendant's subjective intent **is an** element of a Plaintiff's claim, the Plaintiff must point to specific evidence that **the official's** actions were improperly motivated. Pueblo Neighborhood Health Centers, 847 F.2d at 649. Qualified immunity "provides ample protection to all but the plainly **incompetent** or those who knowingly violate the

law." Hidahl, 938 F.2d at 1155 (citing Malley v. Briggs, 475 U.S. 335, 341 (1986))

In Holmes v. Finney, 631 F.2d 150, 151 (10th Cir. 1980), the court upheld the dismissal of a § 1983 action where the **plaintiffs** alleged that the defendants "conspired to arrange a clandestine tape recording of **the plaintiffs**," "conspired to keep such fact secret from Plaintiffs for the purpose of **entrapping the plaintiffs**," and conspired to use the tape recordings against plaintiffs "in a **political and socio-economic way**." The court held that the complaint failed to state a claim **under either** 42 U.S.C. §§ 1981, 1983, or 1985.

The Complaint alleges that, on **March 11, 1991**, while plaintiffs and two other members of their treatment team at **Eastern State Hospital** were on duty, a patient told them that a mental health aide, **Daniel Clute**, had handled her roughly and dug his fingernails into her right arm. The **treatment team**, knowing that Clute was HIV positive and had put the patient at risk of **infection** with the disease AIDS, decided that their responsibility was to file a grievance **on behalf** of the patient with their superiors in the Department of Mental Health. On **April 26, 1991**, plaintiffs and the two other team members received notices that they **were to be** suspended without pay for five days for failing to obey DMH policies **regarding discriminatory** actions against HIV positive individuals and misconduct for utilizing **an improper form** to report the alleged patient abuse. Plaintiff Snow was subsequently **transferred** to a lesser position within the hospital and plaintiff Ramirez was terminated **allegedly** for the quality of his performance. Plaintiffs contend their discipline was the result of **an agreement** between DMH and Clute that Clute would forbear a lawsuit against DMH **based on** the incident.

Nowhere in the Complaint do the **plaintiffs** set forth the specific facts that support

their conclusionary allegations that they **were** disciplined and discharged for the report of Clute's treatment of the patient. The **Complaint** states only that they filed the grievance for the patient and were later demoted **or** discharged. There are no facts recited that would connect the events, or show that **the** latter was in retaliation for the former, other than the conclusionary allegations that **the** actions were retaliatory.

Defendants' Motion to Dismiss **based on** qualified immunity is granted.

Defendants Goodner, Pendergrass, **Prigmore** and Leflore are also entitled to absolute immunity. Pendergrass and Prigmore **are** legal counsel for the defendant, DMH, and Goodner and LeFlore were the DMH **hearing** officers in the discipline of Ramirez and the personnel action relating to Snow. Administrative agency personnel are absolutely immune with regard to their actions while **conducting** administrative and judicial functions. Butz v. Economou, 438 U.S. 478, 512-17 (1978).


The DMH should be dismissed **because** the State and its agencies are entitled to immunity from a 42 U.S.C. § 1983 **lawsuit** under the Eleventh Amendment. Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Association, 450 U.S. 147 (1981). "Unless a state **has waived** its Eleventh Amendment immunity or Congress has overridden it, . . . a State **cannot** be sued directly in its own name regardless of the relief sought." Kentucky v. Graham, 473 U.S. 159, 167, n. 14 (1985). See also, Will v. Michigan Department of State Police, 491 U.S. 58 (1989) (neither a state nor state officials acting in their official capacities **are** persons within the meaning of 42 U.S.C. § 1983). Oklahoma has not waived its **Eleventh** Amendment immunity.

Because Defendant's are **immune** from suit under federal law, there is no

supplemental jurisdiction under 28 U.S.C. § 1367 for Plaintiff's state common law claim.

Defendants' Motion to Dismiss **Plaintiffs'** Complaint (Docket #6) is granted.

Dated this 21 day of April, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**APR 21 1992**

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

Case No. 91-C-777-E

DARREL W. OVERHOLT; BARBARA  
T. OVERHOLT; COUNTY TREASURER  
OF TULSA COUNTY, OKLAHOMA and  
BOARD OF COUNTY COMMISSIONERS,  
TULSA COUNTY, OKLAHOMA,

Defendants.

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**ORDER**

NOW on this 20<sup>th</sup> day of April, 1992, this cause comes on for hearing before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma upon the Stipulated Dismissal With Prejudice herein; and the Court being fully advised in the premises, finds that said Stipulated Dismissal should be granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all the Defendants are dismissed with prejudice in the above entitled action.

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE